

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE B. ENFORCEMENT AND COLLECTION

CHAPTER 112. TAXPAYERS' SUITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. TAXPAYERS' SUITS: JURISDICTION. The district courts of Travis County have exclusive, original jurisdiction of a taxpayer suit brought under this chapter. This section prevails over a provision of Chapter 25, Government Code, to the extent of any conflict.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 3, eff. Sept. 1, 1989.

Sec. 112.002. INCLUSION OF PENALTY AND INTEREST. In this chapter, the terms "tax" and "fee" include an assessment, tax, or fee, and the penalty and interest computed by reference to the amount of the assessment, tax, or fee.

Added by Acts 1991, 72nd Leg., ch. 705, Sec. 7, eff. Sept. 1, 1991.

Sec. 112.003. ATTORNEY'S FEES. Except for a sanction under Chapter 10, Civil Practice and Remedies Code, or the Texas Rules of Civil Procedure, attorney's fees may not be awarded in a suit seeking legal or equitable relief against the state, a state agency, or an officer of the state relating to the applicability, assessment, collection, constitutionality, or amount of a tax, fee, or penalty imposed by this title or Title 3 or collected by the comptroller under any other law.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 3, eff. September 1, 2021.

SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT

Sec. 112.051. PROTEST PAYMENT REQUIRED. (a) If a person who is required to pay a tax imposed by this title or collected by

the comptroller under any law, including a local tax collected by the comptroller, contends that the tax is unlawful or that the public official charged with the duty of collecting the tax may not legally demand or collect the tax, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

(b) The protest must be in writing and must state fully and in detail each reason for recovering the payment.

(c) The protest payment must be made within the period of time set out in Subdivision (3) of Subsection (c) of Section [111.104](#) of this code for the filing of refund claims.

(d) This section and Section [112.052](#) are not severable from the other provisions of this subchapter. If this section or Section [112.052](#) is held invalid for any reason, the entire subchapter is invalid.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 460, ch. 94, Sec. 6, eff. May 10, 1983; Acts 1989, 71st Leg., ch. 232, Sec. 4, eff. Sept. 1, 1989.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. [2080](#)), Sec. 4, eff. September 1, 2021.

Sec. 112.052. TAXPAYER SUIT AFTER PAYMENT UNDER PROTEST.

(a) A person may bring suit against the state to recover a tax required to be paid to the state if the person has first paid the tax under protest as required by Section [112.051](#).

(b) A suit under this section must be brought before the 91st day after the date the protest payment was made, or the suit is barred.

(c) The state may bring a counterclaim in a suit brought under this section if the counterclaim relates to taxes imposed under the same statute and during the same period as the taxes that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. The state is not required to make an assessment of the taxes subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes does

not apply to a counterclaim brought under this subsection.

(d) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax for the transactions in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected or will be refunded, as required by Section [111.0041](#).

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1983, 68th Leg., p. 1373, ch. 283, Sec. 6, eff.

Sept. 1, 1983; Acts 1989, 71st Leg., ch. 232, Sec. 5, eff. Sept. 1,

1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.01, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 4.03, eff. October 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. [2080](#)), Sec. 5, eff. September 1, 2021.

Sec. 112.053. TAXPAYER SUIT: PARTIES; ISSUES. (a) A suit authorized by this subchapter must be brought against the public official charged with the duty of collecting the tax, the comptroller, and the attorney general.

(b) The issues to be determined in the suit are limited to those arising from the reasons expressed in the written protest as originally filed.

(c) A copy of the written protest as originally filed must be attached to the original petition filed by the person paying the tax with the court and to the copies of the original petition served on the comptroller, the attorney general, and the public official charged with the duty of collecting the tax.

(d) The attorney general shall represent the comptroller in a suit under this subchapter.

(e) A person may not intervene in a suit under this subchapter.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1987, 70th Leg., ch. 89, Sec. 2, eff. Sept. 1, 1987;

Acts 1997, 75th Leg., ch. 1423, Sec. 19.05, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 6, eff. September 1, 2021.

Sec. 112.054. TRIAL DE NOVO. The trial of the issues in a suit under this subchapter is de novo.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.055. CLASS ACTIONS. (a) In this section, a class action includes a suit brought under this subchapter by at least two persons who have paid taxes under protest as required by Section 112.051 of this code.

(b) In a class action, all taxpayers who are within the same class as the persons bringing the suit, who are represented in the class action, and who have paid taxes under protest as required by Section 112.051 of this code, are not required to file separate suits, but are entitled to and are governed by the decision rendered in the class action.

Acts 1981, 67th Leg., p. 1512, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.056. ADDITIONAL PROTEST PAYMENTS BEFORE HEARING.

(a) A petitioner shall pay additional taxes when due under protest after the filing of a suit authorized by this subchapter and before the trial. The petitioner may amend the original petition to include all additional taxes paid under protest before five days before the day the suit is set for a hearing or may elect to file a separate suit. No such election shall prevent the court from exercising its power to consolidate or sever suits and claims under the Texas Rules of Civil Procedure.

(b) Repealed by Acts 1989, 71st Leg., ch. 232, Sec. 25(a), eff. Sept. 1, 1989.

(c) This section applies to additional taxes paid under protest only if a written protest is filed with the additional taxes and the protest states the same reason for contending the payment of taxes that was stated in the original protest.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1983, 68th Leg., p. 1374, ch. 283, Sec. 7, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 232, Sec. 25(a), eff.

Sept. 1, 1989.

Sec. 112.057. PROTEST PAYMENTS DURING APPEAL. (a) If the state or the person who brought the suit appeals the judgment of a trial court in a suit authorized by this subchapter, the person who brought the suit shall continue to pay additional taxes under protest as the taxes become due during the appeal.

(b) Additional taxes that are paid under protest during the appeal of the suit shall be governed by the outcome of the suit without the necessity of the person filing an additional suit for the additional taxes.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 6, eff. Sept. 1, 1989.

Sec. 112.058. SUBMISSION OF PROTEST PAYMENTS TO COMPTROLLER.

(a) The comptroller shall, immediately on receipt of a payment made under protest under Section 112.051, deposit each portion of the payment to the credit of the account or fund to which the tax paid under protest is allocated by law.

(b) The comptroller shall maintain detailed records of payments made under protest under Section 112.051.

(c) An amount paid under protest under Section 112.051 bears pro rata interest. The pro rata interest is the amount of interest earned by the amount paid under protest.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 11(2), eff. September 1, 2021.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 11(2), eff. September 1, 2021.

(f) All protest payments of taxes or of fees on prizes imposed by and collected for the state under Chapter 2001, Occupations Code, that become due on or after September 1, 1993, are governed by Subchapter J, Chapter 403, Government Code.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 233, Sec. 1, eff. June 3, 1985; Acts 1987, 70th Leg., ch. 421, Sec. 1, eff. Aug. 31, 1987; Acts

1987, 70th Leg., 2nd C.S., ch. 5, art. 10, Sec. 1; Acts 1989, 71st Leg., ch. 232, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 641, Sec. 26, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 286, Sec. 25, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 486, Sec. 7.02, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.06, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.836, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 92, 121(25), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 11.161, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. [2080](#)), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. [2080](#)), Sec. 11(2), eff. September 1, 2021.

Sec. 112.059. DISPOSITION OF PROTEST PAYMENTS BELONGING TO THE STATE. If a suit authorized by this subchapter is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that an amount paid under protest, including the pro rata amount of interest earned on the amount, belongs to the state, the comptroller shall ensure that the proper amount is deposited to the credit of the appropriate state account or fund.

Acts 1981, 67th Leg., p. 1513, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 641, Sec. 27, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 486, Sec. 7.03, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.07, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. [2080](#)), Sec. 8, eff. September 1, 2021.

Sec. 112.060. CREDIT OR REFUND. (a) If a suit under this subchapter results in a final determination that all or part of the money paid under protest was unlawfully demanded by the public official and belongs to the taxpayer, the comptroller shall credit the proper amount, with the pro rata interest earned on that amount,

against any other amount finally determined to be due to the state from the taxpayer according to information in the custody of the comptroller and shall refund the remainder by the issuance of a refund warrant.

(b) A refund warrant shall be written and signed by the comptroller.

(c) Each refund warrant shall be drawn against the accounts or funds to which the amounts paid under protest are allocated by law. If there are not sufficient funds in an account or fund to pay a refund required to be paid under Subsection (a), the comptroller shall draw the warrant against the General Revenue Fund or other account or fund from which refunds may be made, as the comptroller determines appropriate.

(d) The comptroller shall issue each refund warrant and shall deliver it to the person entitled to receive it.

(e) The comptroller may not refund an amount of tax to a taxpayer or person who collects taxes from another person unless the taxpayer or person refunds all the taxes to the person from whom the taxes were collected.

Acts 1981, 67th Leg., p. 1514, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 233, Sec. 2, eff. June 3, 1985; Acts 1989, 71st Leg., ch. 232, Sec. 8, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 486, Sec. 7.04, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1040, Sec. 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.08, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. [2080](#)), Sec. 9, eff. September 1, 2021.

#### SUBCHAPTER D. SUIT FOR TAX REFUND

Sec. 112.151. SUIT FOR REFUND. (a) A person may sue the comptroller to recover an amount of tax, penalty, or interest that has been the subject of a tax refund claim if the person:

(1) has filed a tax refund claim under Section [111.104](#);

(2) either:

(A) has filed, as provided by Section [111.105](#), a motion for rehearing that has been denied by the comptroller; or

(B) is authorized to bring the suit under Section [111.106\(b\)](#); and

(3) has paid any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

(b) The suit must be brought against both the comptroller and the attorney general and must be filed in a district court.

(c) A person who satisfies the requirement of Subsection (a)(2)(A) must file the suit before the expiration of 60 days after the issue date of the denial of the motion for rehearing or it is barred. A person who satisfies the requirement of Subsection (a)(2)(B) must file the suit during the time provided by Section [111.106\(b\)](#) or it is barred.

(d) The amount of the refund sought must be set out in the original petition. A copy of the motion for rehearing filed under Section [111.105](#) or the notice of intent filed under Section [111.106\(a\)](#), as applicable, must be attached to the original petition filed with the court and to the copies of the original petition served on the comptroller and the attorney general.

(e) A person may not intervene in the suit.

(f) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the transactions in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected or will be refunded, as required by Section [111.0041](#).

Acts 1981, 67th Leg., p. 1516, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1987, 70th Leg., ch. 89, Sec. 3, eff. Sept. 1, 1987;

Acts 1989, 71st Leg., ch. 232, Sec. 17, 25(a), eff. Sept. 1, 1989;

Acts 1997, 75th Leg., ch. 1423, Sec. 19.128, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 4.04, eff. October 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 379 (S.B. [903](#)), Sec. 2, eff. September 1, 2021.

Sec. 112.1512. COUNTERCLAIM. The state may bring a counterclaim in a suit brought under this subchapter if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

Added by Acts 1989, 71st Leg., ch. 232, Sec. 18, eff. Sept. 1, 1989.

Sec. 112.152. ISSUES IN SUIT. (a) The only issues that may be raised in a suit under this subchapter are, as applicable, the:

(1) grounds of error contained in the motion for rehearing; or

(2) material facts and legal bases contained in the notice of intent filed under Section [111.106](#)(a).

(b) The suit applies only to a tax liability period considered in the comptroller's decision or covered by the notice of intent filed under Section [111.106](#), as applicable.

Acts 1981, 67th Leg., p. 1516, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 379 (S.B. [903](#)), Sec. 3, eff. September 1, 2021.

Sec. 112.153. ATTORNEY GENERAL TO REPRESENT COMPTROLLER. The attorney general shall represent the comptroller in a suit under this subchapter.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.154. TRIAL DE NOVO. In a suit under this subchapter, the issues shall be tried de novo as are other civil cases.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 112.155. JUDGMENT. (a) The amount of a judgment for the plaintiff shall be credited against any tax, penalty, or interest imposed by this title and due from the plaintiff.

(b) The remainder of the amount of a judgment not credited to a tax, penalty, or interest due shall be refunded to the plaintiff.

(c) The plaintiff is entitled to interest on the amount of tax included in a judgment for the plaintiff equal to the amount of interest that would be due if the tax had been deposited in the suspense account of the comptroller. The interest accrues beginning from the date that the tax was paid until:

(1) the date that the amount is credited against the plaintiff's tax liability; or

(2) a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 232, Sec. 19, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.13, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. 757), Sec. 6, eff. September 1, 2015.

Sec. 112.156. RES JUDICATA. The rule of res judicata applies in a suit under this subchapter only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties.

Acts 1981, 67th Leg., p. 1517, ch. 389, Sec. 1, eff. Jan. 1, 1982.

#### SUBCHAPTER E. SUIT AFTER REDETERMINATION

Sec. 112.201. SUIT AFTER REDETERMINATION. (a) A person may sue the comptroller to dispute an amount of tax, penalty, or interest assessed in a deficiency redetermination or jeopardy redetermination under Chapter 111 if the person has:

(1) filed a request for redetermination under Chapter 111;

(2) obtained a redetermination under Chapter 111 that includes a finding by the comptroller of the disputed and undisputed amounts; and

(3) filed a motion for rehearing of the redetermination that complies with Chapter 2001, Government Code, and that states the specific grounds of error and the disputed amounts associated with the grounds of error.

(b) A person bringing a suit under this subchapter shall pay, as provided by Chapter 111, the redetermination amounts that are not disputed in the motion for rehearing. The failure to pay an undisputed amount does not affect the jurisdiction of a court to consider a suit that complies with Subsection (a).

(c) A person bringing a suit under this subchapter may pay the disputed amounts as provided by Chapter 111. A disputed amount that is not paid as provided by Chapter 111 and that is determined to be due in a final judgment accrues penalties and interest as provided by Chapter 111. After the comptroller has been timely served in a suit that complies with this subchapter, the comptroller and the attorney general are enjoined from collecting disputed amounts from the person bringing the suit during the pendency of the suit but are not enjoined from asserting tax liens. Damages may be awarded under Chapter 65, Civil Practice and Remedies Code, if the court determines that all or part of the enjoined collection amounts were disputed solely for delay.

(d) A suit under this subchapter must be brought against both the comptroller and the attorney general.

(e) A suit under this subchapter must be filed before the expiration of 90 days after the issue date of the denial of the motion for rehearing or it is barred.

(f) The disputed and undisputed amounts of the redetermination must be set out in the original petition. A copy of the motion for rehearing must be attached to the original petition filed with the court and to the copies of the original petition served on the comptroller and the attorney general.

(g) A person may not intervene in a suit under this

subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.202. RECORDS. A person shall produce, in connection with a suit under this subchapter, contemporaneous records and supporting documentation appropriate to the tax for the transactions in question to substantiate and enable verification of the person's claim relating to the amount of the tax, penalty, or interest that has been assessed or collected, as required by Section 111.0041.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.203. COUNTERCLAIM. (a) The state may bring a counterclaim in a suit under this subchapter if:

(1) the counterclaim relates to taxes imposed under the same statute and during the same period as the taxes that are the subject of the suit; and

(2) the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit.

(b) The state is not required to make an assessment of the taxes subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes does not apply to a counterclaim brought under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.204. ISSUES IN SUIT. (a) The grounds of error contained in the motion for rehearing are the only issues that may be raised in a suit under this subchapter.

(b) A suit under this subchapter applies only to a tax liability period considered in the comptroller's redetermination.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.205. ATTORNEY GENERAL TO REPRESENT

COMPTROLLER. The attorney general shall represent the comptroller in a suit under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.206. TRIAL DE NOVO. In a suit under this subchapter, the issues shall be tried de novo as are other civil cases.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.207. JUDGMENT. (a) The amount of a judgment refunding disputed taxes, penalties, or interest paid to the comptroller shall be credited against any tax, penalty, or interest imposed by this title and due from the plaintiff.

(b) The remainder of the amount of a judgment not credited against a tax, penalty, or interest shall be refunded to the plaintiff.

(c) The plaintiff is entitled to interest on the amount of tax refunded in a judgment for the plaintiff equal to the amount of interest that would be due if the tax had been deposited in the suspense account of the comptroller. The interest accrues beginning from the date that the tax was paid until:

(1) the date that the amount is credited against the plaintiff's tax liability; or

(2) a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10, eff. September 1, 2021.

Sec. 112.208. RES JUDICATA. The rule of res judicata applies in a suit under this subchapter only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties.

Added by Acts 2021, 87th Leg., R.S., Ch. 331 (H.B. 2080), Sec. 10,

eff. September 1, 2021.