

HOUSE BILL 3702

By Hackworth

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 1, Part 18 and Title 67, Chapter 1, Part 9, relative to taxpayer remedies for disputed taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-1-901, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-901.

(a) When a person or entity wishes to challenge its liability for a tax which has been assessed against that person or entity or is otherwise due under the provisions imposing such tax, in order to institute in court a challenge to that liability, the person or entity must first pay the disputed tax. Except with respect to state taxes subject to title 9, chapter 8, it shall not be necessary that such payment be designated as made under protest nor shall it be necessary that such payment be made involuntarily or under duress.

(b) Notwithstanding subsection (a), if a person or entity wishes to contend that a tax to which it is subject is facially unconstitutional, the person or entity may bring suit for a declaration of such invalidity within ninety (90) days of the enactment of such tax, within ninety (90) days of first becoming subject to the tax in accordance with its governing provisions, or within ninety (90) days after receiving an assessment for such tax. Otherwise, any tax or the liability therefor may be challenged only in accordance with subsection (a) after payment of the entire amount of tax in dispute.

SECTION 2. Tennessee Code Annotated, Section 67-1-902, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Section 67-1-903, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-903.

(a) The person or entity paying the revenue may, at any time within six (6) months after making the payment, but not thereafter, sue the officer who collected the sum for the recovery thereof in chancery court. The entire disputed amount of tax, penalty, and interest must be paid before any action can be filed by any person or entity contesting the assessment of, liability for, or validity of any tax, except as provided in § 67-1-901(b).

(b) Any person or entity required or permitted to collect taxes from its customers and pay them over to any governmental entity shall have the rights of a taxpayer under this part, regardless of whether the act imposing such tax places the incidence of the tax on such collecting person or entity, and may institute suit to recover the amounts it has paid. In the event such person or entity prevails in the suit, no taxes which were collected from or passed on to customers by the taxpayer shall be refunded unless the taxpayer has refunded or credited the tax to its customers.

SECTION 4. Tennessee Code Annotated, Section 67-1-904, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-904. Any suit brought under this part shall be tried in the chancery court having jurisdiction over the governmental entity collecting or imposing the tax, and if it is determined for any reason that a tax has been wrongfully collected as not being due from the person or entity, then the court trying the case shall certify of record that the tax was wrongfully paid and must be refunded, together with such interest as the court may determine to be proper, and not exceeding the legal rate, and thereupon the appropriate tax collection official of the

county or municipality shall issue a warrant for the refund, which shall be paid in preference to other claims made on the treasury of such governmental entity.

SECTION 5. Tennessee Code Annotated, Section 67-1-905, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Sections 67-1-908, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-908.

(a) The procedures set out in this part shall be the exclusive jurisdiction and sole means of challenging the validity, constitutionality, applicability, or amount of any tax or the liability therefor, except for taxes collected or administered by the commissioner of revenue under part 18 of this chapter; state taxes that are subject to title 9, chapter 8; any unemployment insurance tax collected or administered by the commissioner of labor and workforce development; and any other tax for which a different remedy is specifically provided in the general law or private act imposing such tax.

(b) No court shall issue any declaratory judgment, restraining order, injunction, stay, supersedeas, prohibition, or other writ or process whatsoever to construe any tax law, to determine any liability, or to prevent, hinder, or delay the collection of any tax to which this part applies, except that a court which determines in a suit brought under § 67-1-901(b) that a tax law is facially unconstitutional shall so declare and shall enjoin enforcement of any such tax.

(c) In all instances in which any person or entity shall claim that a tax to which this part applies is invalid, unconstitutional as applied, inapplicable, incorrect in amount, or has been or is being improperly administered, assessed, or collected, the person or entity so complaining shall pay the tax and follow the procedures set out in this part. No

court shall maintain a class action challenging liabilities, seeking refunds, or pertaining to any tax to which this part applies.

SECTION 7. Tennessee Code Annotated, Sections 67-1-909 and 67-1-910, are amended by deleting the sections in their entirety.

SECTION 8. Tennessee Code Annotated, Section 67-1-911, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-911.

(a) This part applies to all taxes imposed by any of the municipalities of this state.

(b) The city attorney or other legal officer of such municipality shall conduct the defense of any suit brought under this part.

SECTION 9. Tennessee Code Annotated, Section 67-1-912, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-912.

(a) This part applies to all taxes imposed by any of the counties of this state.

(b) The county attorney or other legal officer of such county shall conduct the defense of any suit brought under this part.

SECTION 10. Tennessee Code Annotated, Title 67, Chapter 1, Part 9, is amended by adding the following language as a new section:

Section 67-1-913.

(a) Part 18 of this chapter and not this part shall apply to all taxes collected or administered by the commissioner of revenue.

(b) Nothing in this act shall diminish or interfere with the authority of county clerks and appropriate municipal officials in accordance with § 67-1-707 to grant refunds of taxes erroneously or illegally collected. A taxpayer claiming such a refund may bring suit

in court to compel the refund, however, only if it has complied with the procedures set forth in this part.

SECTION 11. Tennessee Code Annotated, Section 67-1-1807, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 67-1-1807.

(a) All taxes collected or administered by the commissioner of revenue shall be governed by the laws regarding suits challenging assessments or seeking refunds as set out in this part, and each taxpayer may proceed only on its own behalf. The procedures set out in this part shall be the exclusive jurisdiction and sole means of challenging the validity, constitutionality, applicability, or amount of any tax collected or administered by the commissioner of revenue or the liability therefor.

(b) No court shall issue any declaratory judgment, restraining order, injunction, stay, supersedeas, prohibition, or other writ or process whatsoever to construe any tax law, to determine any liability, or to prevent, hinder, or delay the collection of any tax to which this part applies, but a court in which suit has properly been brought under § 67-1-1801(b) may determine whether the taxpayer has complied with § 67-1-1801(c), (d), (e) and (f) so as to stay collection of the tax pending final determination of the suit.

(c) In all instances in which any person or entity shall claim that a tax collected or administered by the commissioner of revenue is invalid, unconstitutional on its face or as applied, inapplicable, incorrect in amount, or has been or is being improperly administered, assessed, or collected, the person or entity so complaining shall follow the procedures for challenging an assessment or seeking a refund as set out in this part. No court shall maintain a class action challenging liabilities, seeking refunds, or pertaining to any tax collected or administered by the commissioner of revenue.

(d) It shall not be a condition precedent for suit challenging or seeking the recovery of taxes collected or administered by the commissioner of revenue that such taxes be paid under protest, involuntarily, or under duress.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.