

HOUSE BILL 462

By McDaniel

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 1, Part 1 and Title 67, Chapter 1, Part 18, relative to state tax procedures.

WHEREAS, before 1986 tax liabilities were subject to challenge in court only after the taxpayer made payment under protest; and

WHEREAS, through Chapter No. 749 of the 1986 Public Acts, the General Assembly ordained a new, modern, taxpayer-friendly procedure for challenging and determining liability for all taxes collected or administered by the Commissioner of Revenue; and

WHEREAS, in Chapter No. 749, now codified as Tennessee Code Annotated §§ 67-1-1801 – 67-1-1807, the General Assembly carefully balanced the rights of taxpayers to full and efficient court determinations of their liabilities for taxes collected or administered by the Commissioner of Revenue with the State's interest in ensuring a stable flow of revenues to fund the services and activities of State government; and

WHEREAS, through the 1986 Act the General Assembly enabled each taxpayer to obtain a court declaration of its tax liability without first paying the disputed tax, and provided for a stay of collection during the pendency of such a court challenge if the taxpayer provides adequate security in the form of a bond, letter of credit, pledge of assets, or liens to ensure that the taxes can be collected if the liability is upheld; and

WHEREAS, the General Assembly in Section 8 of Chapter No. 749 (codified as Tennessee Code Annotated § 67-1-1804) expressly declared that the procedures it set forth in that Chapter are "the sole and exclusive jurisdiction for determining liability for all taxes collected or administered by the Commissioner of Revenue;" and

WHEREAS, this law has been followed and implemented by the courts in cases such as L.L. Bean, Inc. v. Bracey, 817 S.W.2d 292 (Tenn. 1991), which held that a declaratory judgment

outside of the procedures set forth in Tennessee Code Annotated §§ 67-1-1801 – 67-1-1807 was not available to construe a tax law administered by the Commissioner of Revenue; and

WHEREAS, this 1986 Act is the foundation upon which taxpayers have challenged their liabilities and all Revenue Department tax litigation has been conducted for the past 25 years; and

WHEREAS, the General Assembly believes that this law has functioned well to protect the rights of citizens, businesses, and taxpayers to challenge taxes collected or administered by the Commissioner of Revenue, while also providing security and safeguarding the State's revenues; and

WHEREAS, in *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008), which was a property tax case not involving the Department of Revenue, the Supreme Court determined that in some circumstances a declaratory judgment could be obtained under Tenn. Code Ann. §§ 29-14-101 et seq. to determine the validity of a tax statute; and

WHEREAS, in *Colonial Pipeline Co.* and in *Waters v. Farr*, 291 S.W.3d 873 (Tenn. 2009), which case satisfied all the requirements for a proper suit challenging an assessment under Tennessee Code Annotated § 67-1-1801, the Supreme Court did not fully consider the impact of the exclusivity provisions of Tennessee Code Annotated § 67-1-1804 because that question was not necessary to a decision in either case and therefore was not fully briefed or argued before the Court; and

WHEREAS, the General Assembly wishes to clarify that the procedures set out in Tennessee Code Annotated §§ 67-1-1801 – 67-1-1807, which have operated in an effective and balanced manner for the past 25 years, are and remain the only methods for obtaining a court decision concerning tax laws and liabilities administered by the Commissioner of Revenue, and that neither the Declaratory Judgment Act, Tennessee Code Annotated §§ 29-14-101 et seq.,

nor the declaratory judgment provisions of the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-225, have any application in such matters,

NOW, THEREFORE, the General Assembly acts to clarify and reinforce the procedures for challenges to taxes collected or administered by the Commissioner of Revenue, as follows:

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

SECTION 1. Tennessee Code Annotated, Section 67-1-110(c), is amended by adding the following subsections to the Tennessee Taxpayer Bill of Rights as appropriately numbered provisions:

() Challenge in court any tax assessment made against you without first having to pay the assessed tax, so long as suit is filed within ninety (90) days of the mailing of the notice of assessment in accordance with Section 67-1-1801(b);

() Obtain a stay of collection while such a suit is pending by posting one of the forms of security set out at Section 67-1-1801(c);

() Have an ample period to file any claim for refund, as set out at Section 67-1-1802;

() Pursue a refund without the necessity of designating payment of the tax as having been made under protest;

() Have an ample period to pursue in court any refund claim that is denied or not acted upon in timely fashion by the Department, as provided in Sections 67-1-1802(b) and (c);

() Obtain an award of reasonable attorneys' fees and expenses of litigation of up to twenty percent (20%) of the amount assessed or denied when you are the prevailing party in a suit challenging an assessment or seeking a refund, as provided in Section 67-1-1803(d).

SECTION 2. Tennessee Code Annotated, Section 67-1-1807, is amended by deleting the section in its entirety and by substituting instead the following language:

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 his or her 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 or the taxpayer's liability for such tax.

(b) No court shall issue any declaratory judgment, restraining order, injunction, stay, supersedes, prohibition, or other writ or process whatsoever to construe or determine the validity of 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 in which suit has properly been brought under § 67-1-1801(b) shall take any action necessary to implement the stay of collection provided by §§ 67-1-1801(c), (d), (e), and (f) if, and only if, that court determines that the assessed taxpayer has complied with the requirements stated therein so as to stay collection 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 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.

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

SECTION 3. This act shall take effect on becoming law, the public welfare requiring it.