

SUBJECT: Prohibiting the award of attorney's fees in tax lawsuits against the state

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy,
Murr, Raymond, Shine, Springer, Stephenson

0 nays

WITNESSES: For — None

Against — (*Registered, but did not testify*: Jonathan Saenz, Texas Values)

On — (*Registered, but did not testify*: Ray Langenberg, Comptroller of
Public Accounts)

BACKGROUND: Under Tax Code, sec. 112.108, a court may not issue a restraining order, injunction, declaratory judgment, or other similar relief against the state relating to a tax or fee. That section also prohibits either party from recovering attorney's fees upon a grant of declaratory relief.

In *R Communications, Inc. v. Sharp*, 875 S.W.2d 314 (TX. 1994), the Supreme Court of Texas ruled that sec. 112.108, in precluding a taxpayer from obtaining judicial review of its tax liability by means of a declaratory action, when combined with other provisions, violated the open courts provision in the Texas Constitution.

In *Rylander v. Bandag*, 18 S.W.3d 296 (TX. App. 2000), the Third Court of Appeals ruled that the prohibition against recovery of attorney's fees in sec. 112.108 was not severable from the remainder of the section and was therefore unconstitutional. The court further ruled that the trial court did not err in awarding attorney's fees under the Uniform Declaratory Judgments Act.

DIGEST: HB 2669 would repeal Tax Code, sec. 112.108. The bill also would create a new section prohibiting a court from awarding attorney's fees in a suit

against the state that seeks relief relating to a tax imposed or collected by the comptroller.

This bill would take effect September 1, 2017, and would apply only to a lawsuit beginning on or after that date.

NOTES:

According to the Legislative Budget Board, the bill could reduce an indeterminate amount of state obligations to pay attorney's fees in tax litigation.

A companion bill, SB 1191 by Hughes, was referred to the Senate Finance Committee on March 9.