HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/4/2001 | HB 1694
Hamric, Hill, Y. Davis, B. Turner

SUBJECT: Exempting motor vehicles leased for personal use from ad valorem taxation

COMMITTEE: Ways and Means — favorable, with amendment

VOTE: 10 ayes — Oliveira, McCall, Craddick, Hartnett, Bonnen, Y. Davis, Heflin, Keffer, Ramsay, Ritter

0 nays

1 absent — Hilbert

WITNESSES: For — David Blassingame, Phil Cates, Jerry Thompson, National Vehicle Leasing Association; Ray Bonilla, L&M Service Group; George Hammerlein for Paul Bettencourt/Harris County Tax Office; Laura Hendrix; Terry McDonald, Terry McDonald Leasing Co.; Jim Robinson, Texas Association of Appraisal Districts

Against — None

BACKGROUND: The Texas Constitution requires taxation of income-producing property. In 1999, 57 percent of voters casting ballots approved the constitutional amendment proposed by SJR 21 by Carona, allowing the Legislature to exempt from property taxes vehicles leased for personal use and not used to produce income (Art. 8, sec. 1). Most appraisal districts apply the exemption to motor vehicles owned by persons who do not use them primarily to produce income.

DIGEST: HB 1694 as amended would implement the personal leased vehicle exemption voters authorized by voters in 1999.Vehicle owners who leased vehicles not used or held for income would be entitled to property tax exemptions on those vehicles for those portions of each tax year they were so leased.

By rule, the Comptroller of Public Accounts would determine whether vehicles qualified for the exemption. The comptroller would issue declaration forms to be distributed by the leasing companies (owners) to their customers
within five days of leasing each personal-use vehicle. Failure to do so would constitute a deceptive trade practice under Business and Commerce Code,

sec. 17.46.The comptroller would develop instructions, deadlines and penalties for falsifying forms, which would provide identifying customer information and include an oath that the vehicle was not to be used to produce income. The companies would have to keep the forms for five years. Failure to do so would cause the company to forego any exemptions.

Applications for exemptions would have to be filed with chief appraisers within 30 days of entering into lease agreements but not later than December 31 of that year. Exemptions would apply only to those portions of tax years in which the leased vehicles qualified for the exemptions. If applications were approved after approval of the local tax rolls, companies would be entitled to refunds of any excess taxes paid.

If taxes were imposed on leased vehicles due to companies' non-compliance, the companies could not charge customers directly or indirectly for any taxes, penalties or interest. If exemptions were canceled because customers used vehicles to produce income, companies could charge customers the taxes plus any penalties or interest.

The bill would take effect January 1, 2002. It would apply only to vehicles leased on or after that date.

SUPPORTERS SAY:

The personal property tax levied on leased vehicles has become an anachronism in today's market. The tax is based on ownership by either the financing entity or the leasing company earning income off the vehicle. But they pass the cost on to the consumer, which is unfair to those not using the vehicles for business purposes. Leasing has become an attractive option for many families and would be more popular if not for this punitive tax that never was meant to be a tax on working people or stay-at-home moms.

Texas is one of the few states to allow taxation of personal leased vehicles as property. It actually is double taxation for the consumer, who also pays sales tax on the lease. This has led to Texas having one of the lowest leased vehicle rates in America – about 17 percent of new-vehicle leases compared to the national average of about 30 percent, according to the National Vehicle Leasing Association (NVLA). The industry estimates that more than 60 percent of vehicles leased in Texas are for personal use. The Legislative Budget Board (LBB) has put the figure at approximately 220,000 vehicles.

Persons who lease vehicles for business purposes get an income tax deduction that personal-use lessees do not. Also, auto buyers pay no personal property tax. It is unfair to penalize consumers because of how they finance a basic need. This policy hurts people with cash flow problems who need transportation and want to lease but cannot afford the taxes.

Granting the exemption would end inconsistencies in tax administration across appraisal districts. The tax is figured differently in different counties – some calculate it on the vehicle's original price, some on its depreciated value – which can lead to hybrid lease arrangements. Some leasing companies do not collect the tax, so it is not included in lease payments. Their customers may be surprised to receive tax bills from assessor-collectors.

If the exemption were granted, the state would generate more motor vehicle sales tax revenue from increased leasing of about $14 million through fiscal 2004, according to the LBB. More car rental programs would become available in Texas offering safer, cheaper cars. In addition, turnover of rental vehicles is shorter than for owned or financed vehicles (38 to 42 months as opposed to 53 months, respectively, according to NVLA). In fiscal 1999, according to the comptroller, the 6.25 percent motor vehicle sales tax generated more than $2.2 billion. A 1999 industry estimate projected a $213 million biennial gain in motor vehicle sales tax revenue if the exemption were granted. This would more than offset the relatively small portion of local government revenue lost to the exemption.

Removing the deceptive trade practice language from the tax liability provision related to company non-compliance would make Texas more attractive to the car-leasing industry. Even though it would not be mentioned in this section of the Tax Code, consumers still could sue under the Deceptive Trade Practices Act if they believed they had a cause of action.

Requiring inventory reporting is important to prevent fraud by companies that would falsely claim exemptions they did not give. Under this bill, they would have to report them to receive them.

OPPONENTS SAY:

In granting this exemption, the state would create a special class of personal property exempt from taxes to the benefit of the car-leasing industry. Such decisions are better left to local taxing entities. In Dallas County, for example, all vehicles are taxed as personal property.

Consumers already can avoid these taxes by means of retail installment contracts developed for the Texas market. They feature a tax-exempt option to buy through a balloon payment and also remove some of the stigma of leasing by furnishing the lessee a copy of the vehicle title. These agreements are easier on appraisal districts, relieve taxes, and reduce fraud. Most Texans prefer to own their cars, so the exemption will not increase leasing significantly by itself. But if fairness is the problem, state and local officials should raise public awareness of how the tax works.

Under the school finance system, the state would have to reimburse school districts for lost revenue beginning with almost $11 million in fiscal 2005, then more than $14 million in fiscal 2006. But cities and counties would not be reimbursed for their losses totaling more than $52 million in fiscal 2004-06, according to the LBB.

The bill would not curb fraud because it contains no mechanism to verify personal use other than customers' declarations, and no enforcement other than comptroller audits. At the least, lessees should have to demonstrate to appraisers that they did not claim business deductions for the vehicles on their federal income tax returns.

OTHER OPPONENTS SAY:

Making tax liability caused by companies' failure to comply with the law a deceptive trade practice provided customers with a specific legal remedy. That provision should not have been removed from the bill.

Mere failure to provide customers with declaration forms should not be a deceptive trade practice. That language should be removed as it was from the provision prohibiting leasing companies from charging customers for taxes incurred because of the companies' non-compliance. Companies already have economic incentive to treat customers well and might be inhibited from doing business in Texas if they faced more grounds for lawsuits.

NOTES: The committee amendments would delete the provision making it a deceptive trade practice for lessors' non-compliance with the law to incur tax liability for lessees, and require lessors to file detailed annual property reports on their inventories with appraisers.

The companion bill, SB 248 by Carona, passed the Senate by voice vote April 26 and is pending in the House Ways and Means Committee.