

SUBJECT: Penalty for failure to render business personal property to tax appraiser

COMMITTEE: Local Government Ways and Means — favorable, without amendment

VOTE: 5 ayes — Hill, Hegar, Mowery, Puente, Quintanilla

0 nays

2 absent — Laubenberg, McReynolds

SENATE VOTE: On final passage, April 24 — 27-4 (Barrientos, Gallegos, Lucio, Madla)

WITNESSES: For — Michael Amezcuita, Cameron County Appraisal District and Texas Association of Appraisal Districts; George Scott Christian, Texas Taxpayers and Research Association; Dan Hart, Taxpayers for Equal Appraisal; Mark Hutcheson, Texas Association of Property Tax Professionals; Foy Mitchell, Jr., Dallas Central Appraisal District; Michele Molter, Texas Apartment Association; Jim Robinson, Texas Association of Appraisal Districts

Against — None

BACKGROUND: Tax Code, sec. 22.01 generally requires individuals and businesses subject to ad valorem taxation to render (report) by April 15 of each tax year to county appraisal districts (CADs) all tangible personal property, other than real estate, used in income-producing activities in conjunction with property they owned or managed on January 1. The law sets no penalties or sanctions for not filing renditions of business personal property (BPP), which may include fixtures, furnishings, equipment, vehicles, and product inventory.

DIGEST: SB 340 would create penalties for failure to file a timely rendition report; establish the content of rendition statements; allow the chief appraiser to ask property owners to submit documentation to support their estimates of the value of BPP rendered; and provide amnesty for past failure to render.

Penalties. A property owner who failed to file a timely rendition report would have to pay a penalty of 10 percent of the property tax owed for that tax year. Property owners prosecuted by local authorities and found guilty in court of

fraud for intentionally filing false statements or reports, or of other fraudulent conduct, would have to pay a penalty of 50 percent of the taxes owed that tax year. Chief appraisers could retain up to 20 percent of penalty amounts to recover their costs. Any remaining balances would have to be shared with the CAD's participating taxing entities. Appraisers could grant written requests for waivers based on owners' reasonable diligence. Judges and appraisers would have to consider seven identical criteria in determining liability and deciding waivers. A property owner could protest an adverse waiver decision to the county's appraisal review board (ARB).

Report content and optional filings. Rendition statements would have to contain:

- owners' names and addresses;
- property descriptions by type and category;
- if applicable, inventory descriptions by type and category and general estimates of quantity;
- property's physical location or taxable situs; and
- the owner's good-faith estimates of the property's market value or optional new-cost figures and dates acquired.

Owners whose BPP was worth less than \$20,000 would have to provide only their names and addresses, general descriptions, and physical locations. Good-faith estimates would be inadmissible in any related subsequent proceedings, except for those held to determine compliance or fraud or an ARB valuation protest. Under certain circumstances, filing exemptions would apply to owners whose property was appraised by third parties hired by CADs or regulated by the Public Utility Commission, Railroad Commission, or the Federal Energy Regulatory Commission or Surface Transportation Board. Reporting forms would have to state that falsifying statements could be a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) or a Class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Information retrieval. Appraisers could ask property owners to submit, within 21 days of request, documentation supporting their value estimates, including relevant physical and economic characteristics and the opinion's effective date. Business owners employing no more than 50 workers could

base estimates on federal depreciation schedules. Statements would be confidential and inadmissible in other proceedings with the same exceptions as good-faith estimates. Owners would be allowed one 30-day filing deadline extension without good cause, beginning with the 2003 tax year. The chief appraiser could not notify an owner about property subject to reporting until after the filing deadline.

Amnesty. The bill would hold new filers harmless for past omissions. Reports filed before December 1, 2003, for the 2003 tax year that complied with the bill's provisions and included previously unreported BPP could not be used to add the value of unreported property to the 2001 or 2002 appraisal rolls. This provision would expire January 1, 2005.

Protest hearings. Property owners contesting their appraised values who failed to report BPP or to respond to information requests would have to establish property values by a preponderance of the evidence presented at the hearing. Otherwise, the CAD would prevail.

The bill would take effect January 1, 2004, unless otherwise noted.

**SUPPORTERS
SAY:**

Tax appraisers in Texas cannot enforce the state's BPP rendition law adequately. As a result, according to some estimates, thousands of businesses are not reporting, underreporting, or inaccurately reporting billions of dollars' worth of taxable property, forcing taxing entities to recover hundreds of millions of dollars in unpaid taxes through higher tax rates than would be necessary otherwise.

SB 340 would balance governmental needs against taxpayers' rights by imposing reasonable penalties, specifying the data to be submitted to CADs, creating an efficient mechanism for CADs to obtain property information and for property owners to justify their submissions, and granting amnesty to delinquent filers.

The bill would establish enforceable penalties that would help local taxing entities recover substantial revenue over the next five years without treating taxpayers like criminals. It would create common-sense incentives and would assess penalties commensurate with violations. Increasing delinquent filers' tax burdens is the most appropriate punishment and would strike at the heart

of why owners do not file — the reduced cost of doing business. Basing penalties on taxes imposed would make more sense than basing penalties on assessed valuation, since valuation figures would be inaccurate for nonfilers anyway.

Property valuations often are inherently subjective, even with documentation. Reporting property should not become adversarial, and appraisers should have to show cause to prosecutors before they begin investigating businesses. Property owners should not have to divulge business information unless they are protesting valuations. The preemptive amnesty and the permanent process would safeguard owners' rights against self-incrimination while giving appraisers the most important information they need: confirmation of taxable BPP. Exceptions would be made for those who reported BPP to other entities or who needed more time to report. ARBs would retain their subpoena power for valuation appeals by owners, and delinquent filers could not abuse the protest hearings process.

SB 340 would give appraisers access to all the information they need to appraise BPP. Creating an unnecessary audit process would allow virtually unlimited access to information that is not pertinent. It would become a tool to subvert both the current and proposed processes that treat both CADs and property owners fairly and equitably. The issue is not auditing, but whether or not information is available for the CADs to conduct proper appraisals. Giving appraisers audit and subpoena power would be tantamount to creating tax police.

Appraisers already have authority to seek court orders forcing businesses to report BPP, but they cannot pursue fraud cases.

**OPPONENTS
SAY:**

The current reporting system works well and does not need to be changed. Most Texas businesses comply with the law, but appraisers can seek court orders against those who do not, according to a ruling upholding enforcement of the rendition statute by the First Court of Appeals in Houston (*Robinson v. Budget Rent-a-Car Systems, Inc., et al.*, 51 S.W.3d 425 (Tex. App.-Hous. (1 Dist.))). SB 340 would target a small minority of scofflaws.

BPP represents a relatively small proportion of overall property value. In fact, its exact size is unknown, meaning that revenue-loss estimates are dubious.

Some of this property, such as highly sophisticated technological or scientific equipment, is well identified but so difficult to appraise that CADs contract out much of the work. Even property owners cannot always assess the value of furnishings and equipment, some of which may be years old, obsolete, or unique to their industries or businesses.

**OTHER
OPPONENTS
SAY:**

The penalties SB 340 would impose are too weak to increase compliance significantly. Penalizing delinquent filers or nonfilers even 50 percent of the taxes imposed would not be a sufficient deterrent to concealing assets, which is the root of the problem. Appraisers lack the resources to pursue businesses they believe are circumventing the law. They need audit and subpoena power and/or the ability to seek court orders from the outset to force compliance; otherwise, the system remains essentially voluntary.

The bases for owners' BPP estimates of market value should be mandatory; the good-faith estimates should be optional. Homeowners must defend their value estimates with actual costs or comparative data, not merely their opinions. Because the bill would not allow appraisers to compel additional supporting information from BPP owners, appraisers would have to decide whether to investigate based on the word of those under suspicion — a conflict of interest that would not improve the current system.

Businesses failing to report BPP should not be able to recover attorneys' fees if they subsequently file suit challenging appraised values as too high.

Most states do not tax BPP at all. This taxation requirement is more trouble than it is worth and should be repealed.

NOTES:

According to the fiscal note, during fiscal 2004-05, the bill would result in a net gain of \$23 million for the Foundation School Fund, \$135.7 million for school districts, \$63.8 million for cities, and \$27.6 million for counties. Gains for the school fund would increase significantly in subsequent years, based on projected increases in taxable school property values and decreased state funding requirements.

SB 175 by Barrientos, which would give appraisers limited auditing and investigative powers to enforce reporting, was considered in a public hearing by the Senate Finance Committee on March 12 and left pending.