

- SUBJECT:** Tax situs for vehicles located at wholesale motor vehicle auctions
- COMMITTEE:** Local Government Ways and Means —favorable. without amendment
- VOTE:** 5 ayes — Hill, Hamilton, Laubenberg, Puente, Quintanilla
0 nays
2 absent — Elkins, Uresti
- WITNESSES:** For — Mark Hutcheson, Barry Roop, Texas Association of Wholesale Auto Auctions
Against — None
On — Jim Robinson
- BACKGROUND:** Under Tax Code, sec. 21.02 tangible personal property has taxable situs and is taxable by a taxing unit if:
- it is located in the unit on January 1 for more than a temporary period;
 - it is normally located in the unit but, as of January 1, it is outside the unit temporarily;
 - it is normally returned to the unit between uses; or
 - the owner resides or maintains a principal place of business in the taxing unit but the property does not satisfy one of the other three requirements.
- Tax Code, sec. 22.04 requires a person to file a report with the chief appraiser listing the owner of property that is under the person's possession for bailment, lease, consignment, or other arrangement.
- Under Tax Code, sec. 23.121, subsec. (b), the market value of a licensed dealer's motor vehicle inventory on January 1 is defined as the total amount of sales from the dealer's inventory, minus sales to dealers, fleet transactions, and subsequent sales for the prior year, divided by 12.

DIGEST:

Under HB 2392, a motor vehicle would not have taxable situs in a taxing unit if, on January 1, the vehicle:

- had been located for less than 60 days at a wholesale motor vehicle auction; and
- was offered for resale.

The report required under Tax Code sec. 22.04 would not apply to a motor vehicle that was located at a motor vehicle auction on January 1 and that:

- did not have situs because it had been located at the auction for less than 60 days and was offered for resale;
- was offered for sale by a dealer whose inventory was subject to taxation under Tax Code, ch. 23; or
- or was collateral possessed by a lienholder and offered for sale in foreclosure of a security interest.

The bill would apply only to ad valorem taxes imposed for a tax year beginning on or after January 1, 2006.

The bill would take effect January 1, 2006.

SUPPORTERS
SAY:

By clarifying the law governing situs of a motor vehicle at a wholesale auto auction, HB 2392 would address a growing problem for auto wholesalers, dealers, and consumers in Texas. Local taxing units currently have the authority to tax vehicles located at wholesale auto auctions. Under this bill, a vehicle located at an auction for less than the 60 days before January 1 would not be taxable, allowing auctions to maintain consistent business operation throughout the year instead of being harmed by an artificial bottleneck caused by sellers holding their inventories out of state.

Wholesale auto auctions function as agents through which large car companies like General Motors and rental companies like Hertz sell used program or rental vehicles to retail auto dealers. An auto auction does not hold the title on vehicles located on its property. Rather, the title is held by the seller, which often is based out-of-state. As these sellers have become aware that their cars are subject to local ad valorem taxation on January 1, these firms increasingly have opted to stop sending their vehicles to auto auctions in Texas toward the end of the year and transferring their vehicles to neighboring states that do not subject such inventory to taxation. The

immediate consequence of this practice for wholesalers is a significant loss of business in November and December, which can lead to layoffs for their employees just before the holiday period.

The impact that this bill would have on tax collections for local taxing units would be minimal. While the bill would exempt inventory that had been at an auction for less than two months as of January 1, this is inventory that currently is being held out of state by sellers in order to avoid taxation of the property. Because motor vehicles that would be exempted under the bill largely are untaxed now, taxing units would see a negligible reduction in tax revenue if they saw any impact at all. Further, because more vehicles would be in the state and eligible for sale, the state likely would see improved sales tax revenues from auto sales, offsetting any decrease in revenue from ad valorem taxes.

The bill wisely would exempt from ad valorem taxation vehicles located at an auction when those vehicles were owned by retail dealers subject to the special tax provisions of automobile inventories. This would avoid unfair double taxation of this inventory. The bill also would exempt collateral held by a lien holder at an auction because the lien holder would be selling the vehicle for settlement of debts, rather than for profit. Many taxing units already exempt these two categories from rendition, and HB 2392 simply would clarify this fact in statute.

OPPONENTS
SAY:

HB 2392 could reduce the amount of revenue for taxing units at a time when many local governments are struggling to pay for basic services. According to the fiscal note, some local governments that tax motor vehicles with situs within their jurisdiction would lose revenue if HB 2392 were enacted. Even if sellers are moving their inventory out of state before January 1, it is inevitable that some vehicles remain at auctions through that date. Local governments would lose revenue from ad valorem taxes on this inventory.

Local governments should be able to determine how best to tax inventory at wholesale auto auctions. Although some may consider it unfair to require wholesale auto auctions to provide to the chief appraiser information on the owner of vehicles taxed under Tax Code ch. 23, this is a determination best left up to local jurisdictions.

NOTES: The companion bill, SB 1642 by Lucio, has been referred to the Senate Finance Committee.