

BILL ANALYSIS

Senate Research Center

S.B. 759
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DIGEST

Currently, the Tax Code provides for the taxation of a dealer's heavy equipment inventory. In 1993, the legislature modified the way automobile dealers calculated inventory for tax purposes. This modification has provided more predictability and less year-end difficulty for the automobile dealers and local tax assessor-collectors. In 1995, the legislature modified the way boat dealers calculated inventory for tax purposes to follow the guidelines set forth for the automobile dealers in 1993. This bill would set forth guidelines for the appraisal and ad valorem taxation of a dealer's heavy equipment inventory similar to the guidelines set forth for automobile dealers in 1993 and boat dealers in 1995.

PURPOSE

As proposed, S.B. 759 sets forth guidelines for the appraisal and ad valorem taxation of a dealer's heavy equipment inventory.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller in SECTION 2 (Sections 23.1241(f) and 23.1242(e), Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23.12(a) and (f), Tax Code, to provide that the market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business, except as provided by, among others, Sections 23.121 and 23.1241, Tax Code, rather than Section 23.12A, Tax Code. Authorizes the owner of an inventory other than a dealer's motor vehicle inventory as that term is defined by Section 23.121, a dealer's heavy equipment inventory as that term is defined by Section 23.1241, or a dealer's vessel and outboard motor vehicle as the term is defined in Section 23.12D, to elect to have the inventory appraised at its market value as of September 1 of the year preceding the tax year to which the appraisal applies. Makes conforming changes.

SECTION 2. Amends Chapter 23B, Tax Code, by adding Section 23.1241 and 23.1242, as follows:

Sec. 23.1241. DEALER'S HEAVY EQUIPMENT INVENTORY; VALUE. (a) Defines "dealer," "dealer's heavy equipment inventory," "dealer-financed sale," "declaration," "fleet transaction," "heavy equipment," "sales price," "subsequent sale," and "total annual sales."

(b) Provides that for the purpose of the computation of property tax, the market value of a dealer's heavy equipment inventory on January 1 is the total annual sales, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the preceding tax year, divided by 12.

(c) Requires the chief appraiser, for the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory of an owner who was not a dealer on January 1 of the preceding tax year, to estimate the market value of the dealer's heavy equipment inventory. Requires the chief appraiser, in making the estimate, to extrapolate using sales data generated by sales from the dealer's heavy equipment inventory in the preceding tax year.

(d) Provides that except for the dealer's heavy equipment inventory, personal property held

by a dealer is appraised as provided by the other sections of the code. Requires the chief appraiser in the case of a dealer whose sales from the dealer's heavy equipment inventory are made predominately to other dealers, to appraise the dealer's heavy equipment inventory as provided by Section 23.12.

(e) Sets forth the conditions under which it is presumed that a dealer is the owner of a dealer's heavy equipment inventory.

(f) Requires the comptroller, by rule, to adopt a dealer's heavy equipment inventory declaration form. Requires each dealer to file a declaration with the chief appraiser and file a copy with the collector by a certain date. Sets forth the sufficient contents of the declaration.

(g) Authorizes a chief appraiser, as provided by this subsection, to examine the books and records of a dealer. Sets forth the requirements for a request to examine by the appraiser. Sets forth the items the chief appraiser is authorized to examine in a request made under this section.

(h) Requires the chief appraiser to report to the comptroller the fact that the dealer has failed to file a declaration, or the dealer has reported the sale of fewer than five items of heavy equipment in the preceding year.

(i) Provides that a dealer commits a misdemeanor punishable by a fine not to exceed \$500 if the dealer fails to file a declaration. Provides that each day a person fails to file the declaration is a separate violation.

(j) Requires a dealer who fails to file a declaration to forfeit a penalty. Provides that a tax lien attaches to the dealer's business personal property to secure payment of the penalty. Requires enforcement of a penalty by the appropriate authorities through judicial means. Sets forth the venue for such judicial enforcement. Provides that a penalty forfeited under this section is \$1,000 for each month or part of a month in which a declaration is not filed after it is due.

Sec. 23.1242. PREPAYMENT OF TAXES BY HEAVY EQUIPMENT DEALERS. (a) Defines "aggregate tax rate," "dealer's heavy equipment inventory," "declaration," "dealer," "sales price," "subsequent sale," "total annual sales," "statement," and "unit property tax factor."

(b) Requires an owner or a person who has agreed by contract to pay the owner's current year property taxes levied against the owner's heavy equipment inventory to assign a unit property tax to each item of heavy equipment sold from a dealer's heavy equipment inventory, except for an item of heavy equipment sold to a dealer, an item of heavy equipment included in a fleet transaction, or an item of heavy equipment that is the subject of a subsequent sale. Sets forth how the unit property tax of each item of heavy equipment is determined. Requires the owner to deposit with the collector an amount equal to the total of unit property tax assigned to all items of heavy equipment sold from the dealer's heavy equipment inventory in the preceding month to which a unit property tax was assigned by a certain date each month. Requires the money to be deposited by the collector to the credit of the owner's escrow account for prepayment of property taxes. Provides that an escrow account is used to pay property taxes levied against the dealer's heavy equipment inventory, and requires the owner to fund the escrow account.

(c) Requires the collector to maintain the escrow account for each owner in the county depository. Provides that the collector is not required to maintain a separate account in the depository for each escrow account created under this section, but requires the collector to maintain separate records for each owner. Requires the collector to retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Provides that interest generated by an escrow account is the sole property of the collector. Prohibits that interest from being

used by an entity other than the collector. Prohibits such interest from being used to reduce or otherwise affect the annual appropriation to the collector.

(d) Prohibits an owner from withdrawing funds in an escrow account.

(e) Requires the comptroller, by rule, to adopt a dealer's heavy equipment inventory tax statement form. Requires a dealer to complete the form with respect to each item of heavy equipment sold. Prohibits a dealer from using any other form for that purpose. Sets forth the minimum contents to be included in the statement.

(f) Requires a dealer, by a certain monthly date, to file with the collector the statement covering the sale of each item of heavy equipment sold by the dealer in the preceding month. Requires a dealer to file a copy of the statement with the chief appraiser and retain documentation relating to the disposition of each item of heavy equipment sold. Authorizes a chief appraiser or collector to examine documents held by a dealer as provided by Section 23.1241(g).

(g) Provides that except as provided by this subsection, Subsection (f) applies to any dealer. Requires a dealer who owes no heavy equipment inventory tax for the current year because the dealer was not in business on January 1, to file a statement for each month that the dealer is in business. Prohibits such a dealer from assigning a unit property tax to an item of heavy equipment sold by the dealer or remit money with the statement except in compliance with the terms of a contract as provided by this section.

(h) Requires a taxing unit to separately itemize the taxes levied against the dealer's heavy equipment inventory. Requires the assessor for the taxing unit, or an entity other than the collector, that collects taxes on behalf of the taxing unit, to provide the collector a true and correct copy of the tax bill sent to the owner. Requires the collector to apply the money in the owner's escrow account to the taxes imposed and deliver a receipt to the owner. Requires the collector to apply the amount to each appropriate taxing unit in proportion to the amount of taxes levied, and requires the assessor of each taxing unit to apply the funds received from the collector to the taxes owed by the owner.

(i) Requires the collector if the amount in the escrow account is not sufficient to pay the taxes in full, to apply the money to the taxes and deliver to the owner a tax receipt for the partial payment and a tax bill for the amount of the deficiency together with a statement that the owner must remit to the collector the balance of the total tax due.

(j) Requires the collector to remit to each appropriate taxing unit the total amount collected by the collector in deficiency payments. Requires the assessor of each taxing unit to apply those funds to the taxes owed by the owner. Provides that taxes that are due but not received by the collector by January 31 are delinquent. Requires the collector, by February 15, to distribute to each appropriate taxing unit all funds collected under authority of this section and held in escrow by the collector under this section. Provides that this section does not impose a duty on a collector to collect delinquent taxes that the collector is not otherwise obligated by law or contract to collect.

(k) Authorizes a person who acquires the business or assets of an owner, by contract, to agree to pay the current year heavy equipment inventory taxes owed by the owner. Requires the owner who owes the current year tax and the person who acquires the business and assets of the owner to jointly notify the chief appraiser and the collector of the terms of the agreement and of the fact that the other person has agreed to pay the current year heavy equipment inventory taxes. Requires the chief appraiser and the collector to adjust records accordingly. Provides that notwithstanding Section 23.1241, a person who agrees to pay current year heavy equipment inventory taxes is not required to file a declaration until the year following the acquisition. Provides that this section does not relieve the selling owner of tax liability.

(l) Provides that a dealer commits a misdemeanor punishable by a fine not to exceed \$100, if the dealer fails to file a statement as required by this section. Provides that each day the

dealer fails to comply with this section is a separate violation.

(m) Requires a dealer who fails to file a declaration to forfeit a penalty. Provides that a tax lien attaches to the owner's business personal property to secure payment of the penalty. Requires enforcement of a penalty by the appropriate authorities through judicial means. Sets forth the venue for such judicial enforcement. Provides that a penalty forfeited under this section is \$500 for each month or part of a month in which a declaration is not filed after it is due.

(n) Requires an owner who fails to remit unit property taxes due as required by this section to pay a penalty of five percent of the amount due. Requires the owner, if the amount is not paid within 10 days after the due date, to pay an additional penalty of five percent of the amount due. Provides that unit property taxes paid by January 31 of the year following the date on which they are due are not delinquent. Requires enforcement of this section by certain authorities. Provides that a penalty is in addition to any other penalty provided by law if the owner's taxes are delinquent.

(o) Requires a fine collected under this section to be deposited in the county depository to the credit of the general fund. Provides that a penalty collected under this section is the sole property of the collector, may be used by no entity other than the collector, and may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(p) Provides that Section 23.123 applies to a declaration or statement filed under this section in the same manner in which that section applies to a statement or declaration filed as required by Section 23.121 or 23.122.

SECTION 3. Effective date: January 1, 1998.
Makes application of this Act prospective.

SECTION 4. Emergency clause.