

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2476
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Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Tax Code provides for separate treatment of heavy equipment dealers, similar to how car and boat dealers are treated under the Tax Code. However, there is some confusion regarding the applicability, calculation, and uniformity of business property taxes relating to businesses who primarily rent or lease heavy equipment.

Currently, under the Tax Code, the taxable market value of a dealer's heavy equipment inventory is the total annual sales, less sales to dealers, fleet transactions, and subsequent sales, for a 12-month period.

While existing law works well for the sales of heavy equipment, the question of how to value rentals of heavy equipment has been the subject of extended litigation and multiple interpretations by different appraisal offices. C.S.H.B. 2476 imposes a single appraisal standard, creating consistent valuation of a dealer's inventory, providing predictability for the business owner and increased compliance for the state.

C.S.H.B. 2476 amends current law relating to the appraisal for ad valorem tax purposes of certain dealer's heavy equipment inventory and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 23.1241(a)(1), (2), (6), (7), (8), and (9), Tax Code, to redefine "dealer," "dealer's heavy equipment inventory," "heavy equipment," "sales price," "subsequent sale," and "total annual sales."

SECTION 2. Amends Section 23.1241, Tax Code, by amending Subsections (b), (e), and (j) and adding Subsection (b-1), as follows:

(b) Deletes existing text providing that, for the purpose of the computation of property tax, a sale is considered to occur when possession of an item of heavy equipment is transferred from the dealer to the purchaser. Makes nonsubstantive changes.

(b-1) Provides that, for the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory, the sales price of an item of heavy equipment that is sold during the preceding tax year after being leased or rented for a portion of that same tax year is considered to be the sum of the sales price of the item plus the total lease and rental payments received for the item in the preceding tax year.

(e) Provides that a dealer is presumed to be an owner of a dealer's heavy equipment inventory on January 1 if, in the 12-month period ending on December 31 of the preceding year, the dealer sold, leased, or rented an item of heavy equipment to a person other than a dealer.

(j) Authorizes, rather than requires, the appropriate district attorney, criminal district attorney, or county attorney to collect the penalty established by this section in the name of the collector, rather than the chief appraiser or collector. Authorizes the chief appraiser to collect the penalty in the name of the chief appraiser. Authorizes the chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney to sue to enforce compliance with this section. Provides that venue of an action brought under this subsection, including an action for injunctive relief, is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. Authorizes the court to award attorney's fees to a chief appraiser, district attorney, criminal district attorney, or county attorney who prevails in a suit to collect a penalty or enforce compliance with this section.

SECTION 3. Amends Sections 23.1242(b), (d), (e), (f), and (m), Tax Code, as follows:

(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, except for an item of heavy equipment sold to a dealer, an item of heavy equipment included in a fleet transaction, an item of heavy equipment that is the subject of a subsequent sale, or an item of heavy equipment that is subject to a lease or rental, to assign a unit property tax to each item of heavy equipment sold from a dealer's heavy equipment inventory. Requires the owner, in the case of a lease or rental, to assign a unit property tax to each item of heavy equipment leased or rented. Provides that the unit property tax of each item of heavy equipment is determined by multiplying the sales price of the item or the monthly lease or rental payment received for the item, as applicable, by the unit property tax factor. Requires the owner, if the transaction is a lease or rental, to collect the unit property tax from the lessee or renter at the time the lessee or renter submits payment for the lease or rental. Require the owner of the equipment to state the amount of the unit property tax assigned as a separate line item on an invoice. Requires the owner, on or before the 10th day of each month, together with the statement filed by the owner as required by this section, to deposit with the collector an amount equal to the total of unit property tax assigned to all items of heavy equipment sold, leased, or rented from the dealer's heavy equipment inventory in the preceding month to which a unit property tax was assigned.

(d) Prohibits the owner from withdrawing funds in an escrow account created under this section, except as provided by Section 23.1243.

(e) Requires a dealer, each month, to complete the form regardless of whether an item of heavy equipment is sold, leased, or rented. Prohibits a dealer from using any other form for that purpose. Provides that the statement may include the information the comptroller of public accounts considers appropriate but is required to include at least the following:

- (1) a description of each item of heavy equipment sold, leased, or rented including any unique identification or serial number affixed to the item by the manufacturer;
- (2) the sales price of or lease or rental payment received for the item of heavy equipment, as applicable;
- (3) the unit property tax of the item of heavy equipment, if any; and
- (4) the reason no unit property tax is assigned if no unit property tax is assigned.

(f) Requires a dealer, on or before the 10th day of each month, to file with the collector the statement covering the sale, lease, or rental of each item of heavy equipment sold, leased, or rented by the dealer in the preceding month. Requires a dealer, on or before the 10th day of a month following a month in which a dealer does not sell, lease, or rent an item of heavy equipment, to file the statement with the collector and indicate that no sales, leases, or rentals were made in the prior 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 and the lease or rental of each item of heavy equipment.

(m) Provides that a tax lien attaches to the dealer's business personal property, rather than the owner's business personal property, to secure payment of the penalty. Authorizes, rather than requires, the appropriate district attorney, criminal district attorney, or county attorney to collect the penalty established by this section in the name of the collector, rather than the chief appraiser or collector. Authorizes the chief appraiser to collect the penalty in the name of the chief appraiser. Authorizes the chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney to sue to enforce compliance with this section. Provides that venue of an action brought under this subsection, including an action for injunctive relief, is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. Authorizes the court to award attorney's fees to a chief appraiser, district attorney, criminal district attorney, or county attorney who prevails in a suit to collect a penalty or enforce compliance with this section.

SECTION 4. Amends Subchapter B, Chapter 23, Tax Code, by adding Section 23.1243, as follows:

Sec. 23.1243. REFUND OF PREPAYMENT OF TAXES ON FLEET TRANSACTION.

(a) Defines, in this section, "dealer" and "fleet transaction."

(b) Authorizes a dealer to apply to the chief appraiser for a refund of the unit property tax paid on a sale that is a fleet transaction.

(c) Requires the chief appraiser to determine whether to approve or deny, wholly or partly, the refund requested in the application. Requires the chief appraiser to deliver a written notice of the chief appraiser's determination to the collector maintaining the escrow account described by Section 23.1242 (Prepayment of Taxes by Heavy Equipment Dealers) and to the applicant that states the amount, if any, to be refunded.

(d) Requires a collector who receives a notice described by Subsection (c) stating an amount to be refunded to pay the amount to the dealer not later than the 45th day after the date the collector receives the notice. Requires the dealer to use the dealer's best efforts to pay the refund to the customer who paid the tax that relates to the fleet transaction for which the refund is requested not later than the 30th day after the date the dealer receives the refund.

SECTION 5. Amends Section 41.44(a), Tax Code, as follows:

(a) Requires the property owner, except as provided by Subsections (b) (relating to entitling a property owner who files his notice of protest after the deadline prescribed by Subsection (a) but before the appraisal review board approves the appraisal records to a hearing and determination of the protest if he shows good cause for failure to file timely), (b-1) (relating to entitling certain property owners who file a delinquent notice of protest to a hearing and determination), (c) (relating to entitling certain property owners to a hearing and determination), (c-1) (relating to entitling certain property owners having been employed in the Gulf of Mexico who file a delinquent notice of protest to a hearing and determination), and (c-2) (relating to entitling certain property owners having served on full-time active duty in the United States armed forces who file a delinquent notice of protest to a hearing and determination), to be entitled to a hearing and determination of a protest, to file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(1)-(2) Makes no changes to these subdivisions;

(3)-(4) Makes nonsubstantive changes; or

(5) in the case of a determination of eligibility for a refund under Section 23.1243, not later than the 30th day after the date the notice of the determination is delivered to the property owner.

SECTION 6. Amends Section 41.47, Tax Code, by adding Subsection (c), as follows:

(c) Requires the appraisal review board, if, in the case of a determination of eligibility for a refund request under Section 23.1243, the board determines that the dealer is entitled to a refund in excess of the amount, if any, to which the chief appraiser determined the dealer to be entitled, to order the chief appraiser to deliver written notice of the board's determination to the collector and the dealer in the manner provided by Section 23.1243(c).

SECTION 7. Amends Section 42.01, Tax Code, as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. Entitles a property owner to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C (Taxpayer Protest) of Chapter 41 (Local Review);

(B) a determination of an appraisal review board on a motion filed under Section 25.25 (Correction of Appraisal Roll); or

(C) a determination of an appraisal review board of eligibility for a refund requested under Section 23.1243; or

(2) Makes no changes to this subdivision.

Makes a nonsubstantive change.

SECTION 8. Repealers: Sections 23.1241(i) (relating to a dealer who fails to file a required declaration committing an offense) and 23.1242(l) (relating to a dealer who fails to file a required statement committing an offense), Tax Code.

SECTION 9. Provides that this Act applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

SECTION 10. Effective date: January 1, 2012.