

BILL ANALYSIS

C.S.H.B. 1951

By: Hill

Local Government Ways and Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 6.30 of the Tax Code currently allows only attorneys to contract with the governing body of a taxing unit (*e.g.*, a commissioners court) to enforce the collection of delinquent taxes. The compensation of attorneys contracting with a taxing unit pursuant to Section 6.30 is set in the contract and “may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected.” Sections 33.07 and 33.08 of the Tax Code allow the taxing entity to impose an “additional penalty” on the delinquent taxes to defray the costs of collection, but the penalty may not exceed the amount specified in the contract entered under Section 6.30. The additional penalty is charged only if the entity contracts with a private law firm to pursue collections. By law the taxing authority is entitled to no portion of the penalty; it is all paid to the collecting attorney. Texas, unlike most states, does not allow private delinquent tax collection companies to deliver tax collection services to the taxing entity.

The purpose of the bill is to amend the Tax Code to allow private tax collection companies to contract with taxing entities to collect delinquent taxes. Private vendors will be required to retain attorneys for those matters that give rise to a debt collection action or enforcement of a lien in court. Any person retained to collect delinquent taxes will be subject to the rules and restrictions currently placed on a debt collector engaged in the collection of consumer debt. The legislation also allows the taxing entity to keep the difference between the up to 20 percent of the amount of delinquent tax, penalty, and interest collected, and the amount contracted to collect the delinquent taxes. The bill also allows the up to 20 percent penalty to be assessed even if the governing body does not retain a private attorney or other person to collect the delinquent taxes, but chooses to collect delinquent taxes themselves.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 6.24(d) of the Tax Code to allow a “person” other than an attorney to contract with the taxing entity to collect delinquent taxes.

SECTION 2. Amends Section 6.30 of the Tax Code to allow “another person,” *i.e.*, other than an attorney, to represent a county, or other taxing unit, to enforce the collection of delinquent taxes if the delinquent taxes are not collected by the district or county attorney. This section also allows a person other than an attorney that contracts with the governing body of a taxing unit to engage an attorney to enforce the collection of delinquent taxes on behalf of the taxing unit if so authorized by the contract. The section also specifies that a contract with a person to collect delinquent taxes on behalf of a taxing unit that does not conform to the requirements of Section 6.30 is void. Finally, the section requires that any person that contracts to collect taxes is subject to the same rules and restrictions as a debt collector engaging in the collection of consumer debt.

SECTION 3. Amends Section 33.07(a) of the Tax Code to specify that the amount of the

applicable penalty may not exceed 20 percent of the amount of the delinquent taxes, penalty, and interest. The section further stipulates that any amount by which the amount of the penalty exceeds the amount of compensation specified in the contract with the person paid to collect the delinquent taxes shall be retained by the taxing unit or appraisal district.

SECTION 4. Amends Section 33.08(a) and (b) of the Tax Code to conform with changes in Section 6.30 of the Tax Code allowing a penalty of up to 20% to be assessed by the governing body whether the delinquent taxes are turned over to a private person for collection or not. The section further conforms to changes to Section 33.07(a) of the Tax Code providing that the amount of the applicable penalty may be equal to up to 20 percent of the amount of the delinquent taxes, penalty, and interest. Finally, the section conforms to the change in Section 33.07(a) by stipulating that any amount by which the amount of the penalty exceeds the amount of compensation specified in the contract with the person paid to collect delinquent taxes shall be retained by the taxing unit or appraisal district.

SECTION 5. Establishes an effective date for the Act of September 1, 2003. In addition, this section states that changes in Sections 6.24, 6.30, 33.07, and 33.08 of the Tax Code apply only to a contract for the collection of delinquent taxes that is entered into on or after the effective date of this Act. The additional penalty on taxes that become delinquent before the effective date of the Act is governed by the law in effect when the taxes become delinquent, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. No change to this Section.

SECTION 2. Section 6.30(b) of the Tax Code was changed in the originally filed HB 1951 to state that “The governing body of a taxing unit other than a county may determine who represents the unit to collect the unit’s ~~[enforce the collection of]~~ delinquent taxes.” The Committee Substitute eliminates this non-substantive, stylistic change to Section 6.30(b) and replaces the original language of Section 6.30(b). The committee substitute also adds a section that requires the person that collects delinquent taxes for a governing body comply with the restrictions applicable to a debt collector engaging in the collection of consumer debt.

SECTION 3. The originally filed bill allowed a penalty to be assessed only if the delinquent tax account was turned over to a private person or attorney. The committee substitute allows the governing body to collect a penalty of up to 20 percent even if the delinquent taxes are collected by the governing body itself. In the originally filed HB 1951, Section 33.07(a) of the Tax Code was changed to state that the amount of the applicable penalty “is equal to” 20 percent of the delinquent taxes, penalty and interest. In the Committee Substitute, Section 33.07(a) of the Tax Code has been changed to state that the amount of the applicable penalty “may not exceed” 20 percent of the delinquent taxes, penalty, and interest. This change gives taxing entities greater flexibility in determining the amount of the penalty, and thereby greater flexibility in contracting with a person to collect the delinquent taxes, penalty, and interest.

SECTION 4. The change to Section 33.08(b) of the Tax Code in this Section conforms precisely to the change to Section 33.07(a) in the previous Section, and is accomplished for the same purpose.

SECTION 5. No change to this Section.

