

## **BILL ANALYSIS**

C.S.H.B. 3314  
By: Keffer, Jim  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

C.S.H.B. 3314 would facilitate the collection of state taxes and provide additional tools for the enforcement of state tax laws. The purpose of this bill is to ensure that the state will always have a legal remedy to collect its delinquent taxes and to place increased emphasis on the recovery of state receivables and tax law compliance. It represents comprehensive collections' enhancement legislation that will assist in the attainment of this goal.

### **RULEMAKING AUTHORITY**

The bill as substituted does not expressly provide the Comptroller of Public Accounts with rule making authority.

### **ANALYSIS**

SECTION 1. Gives venue and jurisdiction for any suit challenging or attempting to avoid a comptroller collection action exclusively to the district courts of Travis County.

SECTION 2. Clarifies Section 111.016, Tax Code, by creating a legal presumption that a tax was in fact collected if it is reported to the comptroller on a tax return or report. This presumption may be rebutted by a person, including one who is on the accrual method of accounting, if the taxpayer provides the comptroller with satisfactory documentation. Also, provides for the tolling of the statute of limitations for assessing a responsible party if the legal entity the individual is employed by or associated with is in bankruptcy or an administrative hearing challenging a tax assessment. The comptroller has one year to assess the individual after the bankruptcy proceeding is closed or the date the tax liability becomes final.

Subsection (b-1) provides for the tolling of the statute of limitations for assessing a responsible party if the legal entity the individual is employed by or associated with is in bankruptcy or an administrative hearing challenging a tax assessment. The comptroller has one year to assess the individual after the bankruptcy proceeding is closed or the date the tax liability becomes final.

SECTION 3. Creates a new Class A misdemeanor criminal offense for persons who obstruct, hinder, impede or interfere with the comptroller's seizure of property from a delinquent taxpayer by 1.) trespassing on the property of a business or business location that has been seized by the comptroller without the permission of the comptroller or the comptroller's agents; 2.) removing or breaking a lock on a business or business location that has been seized by the comptroller without the permission of the comptroller or the comptroller's agents; 3.) removing or causing to be removed any inventory, equipment, or other property from a business or business location seized by the comptroller without the permission of the comptroller or the comptroller's agents; 4.) damaging destroying, or defacing any inventory, equipment, or property or the business location of a delinquent taxpayer while it is under seizure by the comptroller; or knowingly obstructing, hindering, or impeding the comptroller or the comptroller's agents in the seizure or securing of a delinquent taxpayer's property, including the taxpayer's business location, inventory, or equipment, under this section.

SECTION 4. Amends Section 111.021, Tax Code, to provide for a monetary penalty for failing to comply with a freeze or levy notice issued by the comptroller. The penalty is equal to 50% of the amount sought to be frozen or levied. It also prohibits the filing of an interpleader suit by a third party who has received either notice.

SECTION 5. Prohibits restricted or conditional payments to the comptroller for state taxes, unless otherwise authorized in Title 2, Tax Code (State Taxation). In this section, "taxes" includes the tax and any penalties and interest relating to a tax liability.

SECTION 6. Makes an officer, manager, or director of a corporation, association, or limited liability company or a partner of a general partnership or a managing general partner of a limited partnership or limited liability partnership who, as an officer, manager director, or partner, took action or participated in a fraudulent scheme or plan to evade the payment of taxes due under Title 2 or 3 personally liable for the taxes and any penalty and interest due.

The SECTION also defines what actions may indicate the existence of a fraudulent scheme or fraudulent plan to evade the payment of taxes to include: 1.) filing, or causing to be filed, a false or fraudulent tax return or report with the comptroller on behalf of the business entity; 2.) intentionally failing to file a tax return, report, or other required document with the comptroller when the business entity is under legal obligation to file; 3.) filing, or causing to be filed, a tax return or report with the comptroller on behalf of the business entity that contains an intentionally false statement that results in the amount of the tax due exceeding the amount of tax reported by 25 percent or more; and 4.) altering, destroying, or concealing any record, document, or thing, presenting to the comptroller any altered or fraudulent record, document, or thing, or otherwise engaging in fraudulent conduct with the intent to affect the course or outcome of a comptroller audit or investigation, a redetermination hearing, or another proceeding involving the comptroller.

This personal liability includes liability for the additional 50% fraud penalty if it has been assessed against the taxpayer under Section 111.061(b), Tax Code.

SECTION 7. Amends Section 113.106, Tax Code, by adding Subsection (e). It requires that a suit to determine the validity of a state tax lien must be initiated within ten years of the date of filing of the lien.

This SECTION also adds Section 113.106(f), Tax Code, to provide that a taxpayer is presumed to have received proper notice of the taxpayer's liability if the notice is delivered to the taxpayer's last address of record with the comptroller. Taxpayers may rebut this presumption if they present substantive evidence demonstrating that notice was not received. can substantiate the fact that it did not receive proper notice of the tax liability.

SECTION 8. Adds Section 152.0472, Tax Code, providing that a seller is not considered to have factored, assigned, or transferred a loan under Section 152.047(g) if: 1.) a loan through a seller is pledged as security for the sale of bonds: A) to a qualified institutional buyer, as defined in 17 C.F.R. 230.144A, that is not affiliated to the seller; B) to an institutional accredited investor, as that term is defined by 17 C.F.R. 230.501(a)(1), (2), (3), or (7), that is not affiliated to the seller; or C) in a public offering; 2.) the right to receive payments and the risk of loss on nonpayment remains with the seller or an affiliated collection entity acting as agent of the seller; and 3.) bondholders receive only interest and principal.

In Subsection (b), this SECTION also provides that notwithstanding Subsection (a), the seller may elect to pay all unpaid tax imposed under this chapter on the total consideration. A seller that makes this election is entitled to a credit or reimbursement for the taxes paid under this chapter on the remaining unpaid balance of the contract for which the seller has not received payment or has not otherwise collected the tax due. The seller must take the tax credit or reimbursement on the seller's seller-finance return. The tax credit or reimbursement does not accrue interest.

SECTION 9. Adds Section 183.024, Tax Code, to make officers, directors, managers, or employees of certain alcoholic beverage permittees who control the operation of the permittee or control or supervise the accounting for and payment of the tax imposed by this chapter and who intentionally fail to pay the tax or cause the tax to be paid personally liable for the amount of tax not paid. Under Subsection (c), a responsible individual is jointly and severally liable with the other responsible individuals for the amount of the taxes imposed by this chapter that is not paid. Subsection (d) provides that this section does not apply to private club registration permittees that are a fraternal or veteran's organization.

SECTION 10. Increases the maximum amount of Mixed Beverage Gross Receipts tax bond that the comptroller can demand from \$50,000 to \$100,000 or four times the amount of the permittee's average monthly tax liability, whichever amount is greater.

SECTION 11. Provides that the Act takes effect immediately if it receives the necessary vote. If it does not receive vote necessary for immediate effect, it takes effect September 1, 2007

#### **EFFECTIVE DATE**

Provides that the Act takes effect immediately if it receives the necessary vote. If it does not receive vote necessary for immediate effect, it takes effect September 1, 2007

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

In SECTION 2, the Substitute changes the language from "A person who is on the accrual method of accounting may rebut the presumption..." to "A person, including a person who is on the accrual method of accounting, may rebut this presumption..." This makes it clear the right of rebuttal is available for anyone, not just persons using the accrual method.

SECTION 3 of the Substitute provides a list of ways people can commit an offense by interfering with a comptroller seizure. It no longer makes it an offense to interfere with a comptroller's seizure in "any manner or form" as provided in the originally filed version of the bill.

In SECTION 4, the Substitute removes Subsection f-2, which made it a Class A misdemeanor for a person to knowingly fail or refuse to comply with this section after receiving a notice of freeze or levy.

Changes the persons potentially subject to liability under this SECTION 6 to clarify that limited partners of limited partnerships are not included but managing general partners are. Adds the word "fraudulent" in several places to modify the words "scheme" or "plan" to make it clear that legitimate tax planning is not targeted. Also removes wording that would have made a list of several actions or omissions "prima facie" evidence of fraudulent tax evasion. It instead simply says that the actions or omissions "may indicate the existence" of such a scheme or plan, requiring further proof that indicates a fraudulent "intent" or "mens rea" was behind such actions. Also adds language requiring intent (more than gross error).

The Substitute eliminates SECTIONS 7 and 8 of the filed version as they apply to the electronic payment and reporting of certain taxes, and these provisions are addressed in a separate bill. The remaining SECTIONS are renumbered accordingly.

SECTION 7 in the Substitute changes the length of time during which a suit to determine the validity of a lien may be brought from 4 years (as described in the filed version) to 10 years.

The Substitute eliminates SECTION 10 of the filed version as it applies to motor fuels taxes and is addressed in a separate bill. The remaining SECTIONS are renumbered accordingly.

The Substitute adds a new SECTION 8. This SECTION adds Section 152.0472, Tax Code, and relates to the determination of whether a loan is factored, assigned, or transferred.

The Substitute eliminates SECTION 13, provisions regarding the duration of liens, of the filed version and renumbers the remaining SECTIONS accordingly. A separate bill addresses this subject more thoroughly.