

BILL ANALYSIS

S.B. 1617
By: Harris
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Legislature in 1993, adopted a law that requires motor vehicle dealers who obtain a special seller-finance permit to pay a sales tax on payments actually received from a purchaser under an installment contract. The law includes a "due-on-sale" provision that accelerates the payment of the sales tax for the entire purchase price if the installment contract is sold, assigned, or otherwise transferred to a third party.

The federal Internal Revenue Code was amended, around the same time, to require installment sellers, including motor vehicle dealers, to include in their reported annual income the entire value of an installment contract in the year in which the transaction is entered. Motor vehicle dealers began creating related finance companies, as a result of the federal law, to allow the dealer to sell an installment contract to the related finance company at a discounted price, lowering the federal income tax liability of the dealer on the installment contract. However, because of the "due-on-sale" clause under state law, Texas dealers cannot take advantage of the deferred sales tax under state law or the lowered tax basis if they sell, assign, or transfer an installment contract to a related finance company.

S.B. 1617 excludes motor vehicle dealers from paying taxes under the accelerated "due-on-sale" provision if the dealer transfers the right to receive payments under an installment contract to a related finance company. This bill also requires the comptroller of public accounts to establish a registration system for related finance companies

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller in SECTION 2 of this bill.

ANALYSIS

SECTION 1. Amends Section 152.047, Tax Code, by adding Subsection (g-1), as follows:

(g-1) Provides that Subsection (g) (requiring a seller, if the seller factors, assigns, or transfers the right to receive payments under an installment contract, to report and submit taxes for consideration at the time of the transfer), does not apply to a transaction by a dealer, as defined by Section 503.001 (a person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location), Transportation Code, in which the dealer sells a purchaser's account to a person registered under Section 152.0475, or grants a security interest in a purchaser's account but retains custody and control of the account and the right to receive payments in the absence of a default under the security agreement.

SECTION 2. Amends Subchapter C, Chapter 152, Tax Code, by adding Section 152.0475, as follows:

Sec. 152.0475. REGISTRATION OF RELATED FINANCE COMPANY. (a) Defines "related finance company."

(b) Requires the comptroller of public accounts (comptroller) to establish a registration system for related finance companies under this section.

(c) Authorizes a related finance company to annually register with the comptroller on a form prescribed by the comptroller. Requires the comptroller to make the forms available to the public.

(d) Authorizes the comptroller to charge an annual fee for each registration. Prohibits the fee from exceeding \$1,500.

(e) Authorizes the comptroller to adopt rules to implement this section.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: This bill would take effect July 1, 2007, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007.

EFFECTIVE DATE

This Act takes effect July 1, 2007, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.