

By: Keffer

H.B. No. 3314

Substitute the following for H.B. No. 3314:

By: Otto

C.S.H.B. No. 3314

A BILL TO BE ENTITLED

AN ACT

relating to administration, collection, and enforcement of state taxes; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 111, Tax Code, is amended by adding Section 111.0102 to read as follows:

Sec. 111.0102. SUIT CHALLENGING COLLECTION ACTION. Venue for and jurisdiction of a suit that challenges or is for the purpose of avoiding a comptroller collection action or state tax lien in any manner is exclusively conferred on the district courts of Travis County.

SECTION 2. Section 111.016, Tax Code, is amended by adding Subsections (a-1) and (b-1) to read as follows:

(a-1) A person is presumed to have received or collected a tax or money represented to be a tax for the purpose of this section if the person files, or causes to be filed, a tax return or report with the comptroller showing tax due. A person, including a person who is on the accrual method of accounting, may rebut this presumption by providing satisfactory documentation to the comptroller that the tax on a transaction or series of transactions was not collected. The documentation is subject to verification by the comptroller.

(b-1) Notwithstanding any other provision of this title, if the tax liability of a corporation, association, limited liability

1 company, limited partnership, or other legal entity with which the
2 responsible individual was employed or associated has either not
3 become final, is subject to tolling of limitations under Section
4 111.207, or is the subject of a federal bankruptcy proceeding, the
5 statute of limitations relating to the period during which the
6 individual may be personally assessed by the comptroller is stayed
7 until the first anniversary of the date the liability becomes final
8 or the date the bankruptcy proceeding is closed or dismissed.

9 SECTION 3. Section 111.017, Tax Code, is amended to read as
10 follows:

11 Sec. 111.017. SEIZURE AND SALE OF PROPERTY. (a) Before the
12 expiration of three years after a person becomes delinquent in the
13 payment of any amount under this title, the comptroller may seize
14 and sell at public auction real and personal property of the person.
15 A seizure made to collect the tax is limited only to property of the
16 person that is not exempt from execution. Service or delivery of a
17 notice of seizure under this section affecting property held by a
18 financial institution in the name of or on behalf of a delinquent
19 who is a customer of the financial institution is governed by
20 Section 59.008, Finance Code.

21 (b) A person commits an offense if the person obstructs,
22 hinders, impedes, or interferes with the comptroller's seizure of
23 the property of a delinquent taxpayer in the following ways:

24 (1) trespassing on the property of a business or a
25 business location that has been seized by the comptroller without
26 the permission of the comptroller or the comptroller's agents;

27 (2) removing or breaking a lock on a business or

1 business location that has been seized by the comptroller without
2 the permission of the comptroller or the comptroller's agents;

3 (3) removing or causing to be removed any inventory,
4 equipment, or other property from a business or business location
5 seized by the comptroller without the permission of the comptroller
6 or the comptroller's agents;

7 (4) damaging, destroying, or defacing any inventory,
8 equipment, or property or the business location of a delinquent
9 taxpayer while it is under seizure by the comptroller; or

10 (5) knowingly obstructing, hindering, or impeding the
11 comptroller or the comptroller's agents in the seizure or securing
12 of a delinquent taxpayer's property, including the taxpayer's
13 business location, inventory, or equipment, under this section.

14 (c) An offense under Subsection (b) is a Class A
15 misdemeanor.

16 SECTION 4. Section 111.021, Tax Code, is amended by
17 amending Subsection (d) and adding Subsection (f-1) to read as
18 follows:

19 (d) On receipt of a notice given under this section, the
20 person receiving the notice:

21 (1) within 20 days after receiving the notice shall
22 advise the comptroller of each such asset belonging to the
23 delinquent or person to whom an unpaid determination applies that
24 is possessed or controlled by the person receiving the notice and of
25 each debt owed by the person receiving the notice to the delinquent
26 person or person to whom an unpaid determination applies; ~~and~~

27 (2) may not transfer or dispose of the asset or debt

1 possessed, controlled, or owed by the person at the time the person
2 received the notice for a period of 60 days after receipt of the
3 notice, unless the comptroller consents to an earlier disposal; and

4 (3) may not avoid or attempt to avoid compliance with
5 this section by filing an interpleader action in court and
6 depositing the delinquent's or person's funds or other assets into
7 the registry of the court.

8 (f-1) A person who fails or refuses to comply with this
9 section after receiving a notice of freeze or levy is liable for a
10 penalty in an amount equal to 50 percent of the amount sought to be
11 frozen or levied. This penalty is in addition to the liability
12 imposed under Subsection (f). The penalty may be assessed and
13 collected by the comptroller using any remedy available to collect
14 other amounts under this title.

15 SECTION 5. Subchapter B, Chapter 111, Tax Code, is amended
16 by adding Section 111.0511 to read as follows:

17 Sec. 111.0511. RESTRICTED OR CONDITIONAL PAYMENTS TO
18 COMPTROLLER PROHIBITED. (a) In this section, "taxes" includes the
19 tax and any penalties and interest relating to a tax liability.

20 (b) Unless the restriction or condition is authorized by
21 this title, a restriction or condition placed on a check or other
22 money instrument in payment of taxes by the maker that purports to
23 limit the amount of taxes owed or place a condition on its
24 acceptance or negotiation is void.

25 SECTION 6. Subchapter B, Chapter 111, Tax Code, is amended
26 by adding Section 111.0611 to read as follows:

27 Sec. 111.0611. PERSONAL LIABILITY FOR FRAUDULENT TAX

1 EVASION. (a) An officer, manager, or director of a corporation,
2 association, or limited liability company, a partner of a general
3 partnership, or a managing general partner of a limited partnership
4 or limited liability partnership who, as an officer, manager,
5 director, or partner, took an action or participated in a
6 fraudulent scheme or fraudulent plan to evade the payment of taxes
7 due under Title 2 or 3 is personally liable for the taxes and any
8 penalty and interest due. The personal liability of an individual
9 includes liability for the additional 50 percent fraud penalty
10 provided by Section 111.061(b). The comptroller shall assess
11 individuals liable under this section in the same manner as other
12 persons or entities may be assessed under this chapter.

13 (b) For purposes of this section, actions that may indicate
14 the existence of a fraudulent scheme or a fraudulent plan to evade
15 the payment of taxes include:

16 (1) filing, or causing to be filed, a false or
17 fraudulent tax return or report with the comptroller on behalf of
18 the business entity;

19 (2) intentionally failing to file a tax return,
20 report, or other required document with the comptroller when the
21 business entity is under a legal obligation to file;

22 (3) filing, or causing to be filed, a tax return or
23 report with the comptroller on behalf of the business entity that
24 contains an intentionally false statement that results in the
25 amount of the tax due exceeding the amount of tax reported by 25
26 percent or more; and

27 (4) altering, destroying, or concealing any record,

1 document, or thing, presenting to the comptroller any altered or
2 fraudulent record, document, or thing, or otherwise engaging in
3 fraudulent conduct with the intent to affect the course or outcome
4 of a comptroller audit or investigation, a redetermination hearing,
5 or another proceeding involving the comptroller.

6 SECTION 7. Section 113.106, Tax Code, is amended by adding
7 Subsections (e) and (f) to read as follows:

8 (e) A person must bring suit to determine the validity of a
9 state tax lien not later than the 10th anniversary of the date the
10 lien was filed. If more than one state tax lien has been filed
11 relating to the same tax liability, the 10-year limitation period
12 provided by this subsection is calculated from the date of the
13 filing of the first lien relating to the liability.

14 (f) A taxpayer is presumed to have received proper notice of
15 the taxpayer's tax liability if the notice is delivered to the
16 taxpayer's last address of record with the comptroller. The
17 taxpayer may rebut the presumption by presenting substantive
18 evidence that demonstrates that notice of the tax liability was not
19 received. If the taxpayer rebuts the presumption of receipt of
20 proper notice with evidence the comptroller considers
21 satisfactory, the period of limitations for filing suit provided by
22 Subsection (e) does not apply.

23 SECTION 8. Subchapter C, Chapter 152, Tax Code, is amended
24 by adding Section 152.0472 to read as follows:

25 Sec. 152.0472. DETERMINATION OF WHETHER LOAN IS FACTORED,
26 ASSIGNED, OR TRANSFERRED. (a) A seller is not considered to have
27 factored, assigned, or transferred a loan under Section 152.047(g)

1 if:

2 (1) a loan through a seller is pledged as security for
3 the sale of bonds:

4 (A) to a qualified institutional buyer, as that
5 term is defined by 17 C.F.R. Section 230.144A, that is not
6 affiliated to the seller;

7 (B) to an institutional accredited investor, as
8 that term is defined by 17 C.F.R. Section 230.501(a)(1), (2), (3),
9 or (7), that is not affiliated to the seller; or

10 (C) in a public offering;

11 (2) the right to receive payments and the risk of loss
12 on nonpayment remains with the seller or an affiliated collection
13 entity acting as agent of the seller; and

14 (3) bondholders receive only interest and principal.

15 (b) Notwithstanding Subsection (a), the seller may elect to
16 pay all unpaid tax imposed under this chapter on the total
17 consideration. A seller that makes this election is entitled to a
18 credit or reimbursement for the taxes paid under this chapter on the
19 remaining unpaid balance of the contract for which the seller has
20 not received payment or has not otherwise collected the tax due.
21 The seller shall take the tax credit or reimbursement on the
22 seller's seller-finance return. The tax credit or reimbursement
23 does not accrue interest.

24 SECTION 9. Subchapter B, Chapter 183, Tax Code, is amended
25 by adding Section 183.024 to read as follows:

26 Sec. 183.024. LIABILITY FOR TAX PAYMENT. (a) In this
27 section:

1 (1) "Responsible individual" includes an officer,
2 manager, director, or employee of a permittee who is under a duty to
3 perform an act with respect to the accounting for or payment of the
4 tax imposed by this chapter.

5 (2) "Tax" includes any tax imposed by this chapter,
6 including the penalty and interest computed by reference to the
7 amount of the tax.

8 (b) An officer, manager, director, or employee of a
9 permittee who controls the operation of the permittee or controls
10 or supervises the accounting for and payment of the tax imposed by
11 this chapter and who intentionally fails to pay the tax or cause the
12 tax to be paid is personally liable for the amount of the tax not
13 paid. The liability imposed by this subsection is in addition to
14 any other penalty provided by law. The dissolution of a
15 corporation, association, limited liability company, or
16 partnership does not affect a responsible individual's liability
17 under this subsection.

18 (c) A responsible individual is jointly and severally
19 liable with other responsible individuals for the amount of the
20 taxes imposed by this chapter that is not paid.

21 (d) This section does not apply to a responsible individual
22 of a private club registration permittee that is a fraternal
23 organization or veterans organization to which Section 32.11,
24 Alcoholic Beverage Code, applies.

25 SECTION 10. Section 183.053(b), Tax Code, is amended to
26 read as follows:

27 (b) The total of bonds, certificates of deposit, letters of

1 credit, or other security determined to be sufficient by the
2 comptroller of a permittee subject to the tax imposed by this
3 chapter shall be in an amount that the comptroller determines to be
4 sufficient to protect the fiscal interests of the state. The
5 comptroller may not set the amount of security at less than \$1,000
6 or more than the greater of \$100,000 or four times the amount of the
7 permittee's average monthly tax liability [~~\$50,000~~].

8 SECTION 11. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2007.