

By: Keffer

H.B. No. 3314

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

22 (b-1) Notwithstanding any other provision of this title, if
23 the tax liability of a corporation, association, limited liability
24 company, limited partnership, or other legal entity with which the

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

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

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

20 (b) A person commits an offense if the person obstructs,
21 hinders, impedes, or interferes with the comptroller's seizure of
22 the property of a delinquent taxpayer in any manner or form,
23 including by:

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 in
11 any manner the comptroller or the comptroller's agents in the
12 seizure or securing of a delinquent taxpayer's property, including
13 the taxpayer's business location, inventory, or equipment, under
14 this section.

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

17 SECTION 4. Section 111.021, Tax Code, is amended by
18 amending Subsection (d) and adding Subsections (f-1) and (f-2) to
19 read as follows:

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

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

1 (2) may not transfer or dispose of the asset or debt
2 possessed, controlled, or owed by the person at the time the person
3 received the notice for a period of 60 days after receipt of the
4 notice, unless the comptroller consents to an earlier disposal; and

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

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

16 (f-2) A person commits an offense if the person knowingly
17 fails or refuses to comply with this section after receiving a
18 notice of freeze or levy. An offense under this subsection is a
19 Class A misdemeanor.

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

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

25 (b) Unless the restriction or condition is authorized by
26 this title, a restriction or condition placed on a check or other
27 money instrument in payment of taxes by the maker that purports to

1 limit the amount of taxes owed or place a condition on its
2 acceptance or negotiation is void.

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

5 Sec. 111.0611. PERSONAL LIABILITY FOR FRAUDULENT TAX
6 EVASION. (a) An officer, manager, or director of a corporation,
7 association, or limited liability company or a member of a general
8 or limited partnership who, as an officer, manager, director, or
9 member took an action or participated in a scheme or plan to avoid
10 the payment of taxes due under this title or other law or to
11 fraudulently evade the taxes is personally liable for the taxes and
12 any penalty and interest due. The personal liability of an
13 individual includes liability for the additional 50 percent fraud
14 penalty provided by Section 111.061(b). The comptroller shall
15 assess individuals liable under this section in the same manner as
16 other persons or entities may be assessed under this chapter.

17 (b) For purposes of this section, actions that constitute
18 prima facie evidence of a scheme or plan to avoid the payment of
19 taxes include:

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

23 (2) filing no tax return, report, or other required
24 document with the comptroller when the business entity is under a
25 legal obligation to file;

26 (3) filing, or causing to be filed, a tax return or
27 report with the comptroller on behalf of the business entity that

1 contains a gross error that results in the amount of the tax due
2 exceeding the amount of tax reported by 25 percent or more; and
3 (4) altering, destroying, or concealing any record,
4 document, or thing, presenting to the comptroller any altered or
5 fraudulent record, document, or thing, or otherwise engaging in
6 fraudulent conduct for the apparent purpose of affecting the course
7 or outcome of a comptroller audit or investigation, a
8 redetermination hearing, or another proceeding involving the
9 comptroller.

10 SECTION 7. Section 111.0625, Tax Code, is amended to read as
11 follows:

12 Sec. 111.0625. ELECTRONIC TRANSFER OF CERTAIN PAYMENTS.
13 The comptroller by rule shall prescribe the amount of taxes paid
14 [~~require a taxpayer who paid \$100,000 or more~~] during the preceding
15 fiscal year in a category of payments that will require a taxpayer
16 [~~required under this title~~] to transfer payments in that category
17 by means of electronic funds transfer in accordance with Section
18 404.095, Government Code, if the comptroller reasonably
19 anticipates the person will pay at least that amount during the
20 current fiscal year.

21 SECTION 8. Section 111.0626, Tax Code, is amended by adding
22 Subsection (b-1) to read as follows:

23 (b-1) The comptroller may adopt rules requiring electronic
24 filing of a report by a taxpayer for any tax without regard to the
25 amount of the tax due.

26 SECTION 9. Section 113.106, Tax Code, is amended by adding
27 Subsections (e) and (f) to read as follows:

1 (e) A person must bring suit to determine the validity of a
2 state tax lien not later than the fourth anniversary of the date the
3 lien was filed. If more than one state tax lien has been filed
4 relating to the same tax liability, the four-year limitation period
5 provided by this subsection is calculated from the date of the
6 filing of the first lien relating to the liability.

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

16 SECTION 10. Section 162.004, Tax Code, is amended by
17 amending Subsections (a) and (b) and adding Subsections (a-1) and
18 (h) to read as follows:

19 (a) A person may not transport in this state any motor fuel
20 by barge, vessel, railroad tank car, or transport vehicle unless
21 the person has a shipping document for the motor fuel that complies
22 with this section.

23 (a-1) A terminal operator or operator of a bulk plant shall
24 give a shipping document to the person who operates the barge,
25 vessel, railroad tank car, or transport vehicle into which motor
26 fuel is loaded at the terminal rack or bulk plant rack.

27 (b) A ~~[The]~~ shipping document ~~[issued by the terminal~~

1 ~~operator or operator of a bulk plant]~~ shall contain the following
2 information and any other information required by the comptroller:

3 (1) the terminal control number of the terminal or
4 physical address of the bulk plant from which the motor fuel was
5 received;

6 (2) the name [~~and license number~~] of the purchaser;

7 (3) the date the motor fuel was loaded;

8 (4) the net gallons loaded, or the gross gallons
9 loaded if the fuel was purchased from a bulk plant;

10 (5) the destination state of the motor fuel, as
11 represented by the purchaser of the motor fuel or the purchaser's
12 agent; and

13 (6) a description of the product being transported.

14 (h) This section does not apply to motor fuel that is
15 delivered into the fuel supply tank of a motor vehicle.

16 SECTION 11. Subchapter B, Chapter 183, Tax Code, is amended
17 by adding Section 183.024 to read as follows:

18 Sec. 183.024. LIABILITY FOR TAX PAYMENT. (a) In this
19 section:

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

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

27 (b) An officer, manager, director, or employee of a

1 permittee who controls the operation of the permittee or controls
2 or supervises the accounting for and payment of the tax imposed by
3 this chapter and who intentionally fails to pay the tax or cause the
4 tax to be paid is personally liable for the amount of the tax not
5 paid. The liability imposed by this subsection is in addition to
6 any other penalty provided by law. The dissolution of a
7 corporation, association, limited liability company, or
8 partnership does not affect a responsible individual's liability
9 under this subsection.

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

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

17 SECTION 12. Section 183.053(b), Tax Code, is amended to
18 read as follows:

19 (b) The total of bonds, certificates of deposit, letters of
20 credit, or other security determined to be sufficient by the
21 comptroller of a permittee subject to the tax imposed by this
22 chapter shall be in an amount that the comptroller determines to be
23 sufficient to protect the fiscal interests of the state. The
24 comptroller may not set the amount of security at less than \$1,000
25 or more than the greater of \$100,000 or four times the amount of the
26 permittee's average monthly tax liability [~~\$50,000~~].

27 SECTION 13. (a) Section 52.006, Property Code, is amended

1 to read as follows:

2 Sec. 52.006. DURATION OF LIEN. (a) Except as provided by
3 Subsection (b), a [A] judgment lien continues for 10 years
4 following the date of recording and indexing the abstract, except
5 that if the judgment becomes dormant during that period the lien
6 ceases to exist.

7 (b) Notwithstanding Section 34.001, Civil Practice and
8 Remedies Code, a judgment in favor of the state or a state agency,
9 as that term is defined by Section 403.055, Government Code, does
10 not become dormant. A properly filed abstract of the judgment
11 continues to constitute a lien under Section 52.001 until the date
12 the judgment is satisfied or the lien is released.

13 (b) The change in law made by this section applies to:

14 (1) a judgment, if the judgment is not then dormant,
15 that exists on the effective date of this Act;

16 (2) a judgment lien on record before the effective
17 date of this Act; or

18 (3) a judgment entered or abstract of judgment
19 recorded and indexed on or after the effective date of this Act.

20 SECTION 14. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2007.