

1-1 By: Keffer (Senate Sponsor - Duncan) H.B. No. 3314
1-2 (In the Senate - Received from the House May 10, 2007;
1-3 May 14, 2007, read first time and referred to Committee on Finance;
1-4 May 19, 2007, reported favorably by the following vote: Yeas 12,
1-5 Nays 0; May 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to administration, collection, and enforcement of state
1-9 taxes; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter A, Chapter 111, Tax Code, is amended
1-12 by adding Section 111.0102 to read as follows:

1-13 Sec. 111.0102. SUIT CHALLENGING COLLECTION ACTION. Venue
1-14 for and jurisdiction of a suit that challenges or is for the purpose
1-15 of avoiding a comptroller collection action or state tax lien in any
1-16 manner is exclusively conferred on the district courts of Travis
1-17 County.

1-18 SECTION 2. Section 111.016, Tax Code, is amended by adding
1-19 Subsections (a-1) and (b-1) to read as follows:

1-20 (a-1) A person is presumed to have received or collected a
1-21 tax or money represented to be a tax for the purpose of this section
1-22 if the person files, or causes to be filed, a tax return or report
1-23 with the comptroller showing tax due. A person, including a person
1-24 who is on the accrual method of accounting, may rebut this
1-25 presumption by providing satisfactory documentation to the
1-26 comptroller that the tax on a transaction or series of transactions
1-27 was not collected. The documentation is subject to verification by
1-28 the comptroller.

1-29 (b-1) Notwithstanding any other provision of this title, if
1-30 the tax liability of a corporation, association, limited liability
1-31 company, limited partnership, or other legal entity with which the
1-32 responsible individual was employed or associated has either not
1-33 become final, is subject to tolling of limitations under Section
1-34 111.207, or is the subject of a federal bankruptcy proceeding, the
1-35 statute of limitations relating to the period during which the
1-36 individual may be personally assessed by the comptroller is stayed
1-37 until the first anniversary of the date the liability becomes final
1-38 or the date the bankruptcy proceeding is closed or dismissed.

1-39 SECTION 3. Section 111.017, Tax Code, is amended to read as
1-40 follows:

1-41 Sec. 111.017. SEIZURE AND SALE OF PROPERTY. (a) Before the
1-42 expiration of three years after a person becomes delinquent in the
1-43 payment of any amount under this title, the comptroller may seize
1-44 and sell at public auction real and personal property of the person.
1-45 A seizure made to collect the tax is limited only to property of the
1-46 person that is not exempt from execution. Service or delivery of a
1-47 notice of seizure under this section affecting property held by a
1-48 financial institution in the name of or on behalf of a delinquent
1-49 who is a customer of the financial institution is governed by
1-50 Section 59.008, Finance Code.

1-51 (b) A person commits an offense if the person obstructs,
1-52 hinders, impedes, or interferes with the comptroller's seizure of
1-53 the property of a delinquent taxpayer in the following ways:

1-54 (1) trespassing on the property of a business or a
1-55 business location that has been seized by the comptroller without
1-56 the permission of the comptroller or the comptroller's agents;

1-57 (2) removing or breaking a lock on a business or
1-58 business location that has been seized by the comptroller without
1-59 the permission of the comptroller or the comptroller's agents;

1-60 (3) removing or causing to be removed any inventory,
1-61 equipment, or other property from a business or business location
1-62 seized by the comptroller without the permission of the comptroller
1-63 or the comptroller's agents;

1-64 (4) damaging, destroying, or defacing any inventory,

2-1 equipment, or property or the business location of a delinquent
 2-2 taxpayer while it is under seizure by the comptroller; or

2-3 (5) knowingly obstructing, hindering, or impeding the
 2-4 comptroller or the comptroller's agents in the seizure or securing
 2-5 of a delinquent taxpayer's property, including the taxpayer's
 2-6 business location, inventory, or equipment, under this section.

2-7 (c) An offense under Subsection (b) is a Class A
 2-8 misdemeanor.

2-9 SECTION 4. Section 111.021, Tax Code, is amended by
 2-10 amending Subsection (d) and adding Subsection (f-1) to read as
 2-11 follows:

2-12 (d) On receipt of a notice given under this section, the
 2-13 person receiving the notice:

2-14 (1) within 20 days after receiving the notice shall
 2-15 advise the comptroller of each such asset belonging to the
 2-16 delinquent or person to whom an unpaid determination applies that
 2-17 is possessed or controlled by the person receiving the notice and of
 2-18 each debt owed by the person receiving the notice to the delinquent
 2-19 person or person to whom an unpaid determination applies; ~~and~~

2-20 (2) may not transfer or dispose of the asset or debt
 2-21 possessed, controlled, or owed by the person at the time the person
 2-22 received the notice for a period of 60 days after receipt of the
 2-23 notice, unless the comptroller consents to an earlier disposal; and

2-24 (3) may not avoid or attempt to avoid compliance with
 2-25 this section by filing an interpleader action in court and
 2-26 depositing the delinquent's or person's funds or other assets into
 2-27 the registry of the court.

2-28 (f-1) A person who fails or refuses to comply with this
 2-29 section after receiving a notice of freeze or levy is liable for a
 2-30 penalty in an amount equal to 50 percent of the amount sought to be
 2-31 frozen or levied. This penalty is in addition to the liability
 2-32 imposed under Subsection (f). The penalty may be assessed and
 2-33 collected by the comptroller using any remedy available to collect
 2-34 other amounts under this title.

2-35 SECTION 5. Subchapter B, Chapter 111, Tax Code, is amended
 2-36 by adding Section 111.0511 to read as follows:

2-37 Sec. 111.0511. RESTRICTED OR CONDITIONAL PAYMENTS TO
 2-38 COMPTROLLER PROHIBITED. (a) In this section, "taxes" includes the
 2-39 tax and any penalties and interest relating to a tax liability.

2-40 (b) Unless the restriction or condition is authorized by
 2-41 this title, a restriction or condition placed on a check or other
 2-42 money instrument in payment of taxes by the maker that purports to
 2-43 limit the amount of taxes owed or place a condition on its
 2-44 acceptance or negotiation is void.

2-45 SECTION 6. Subchapter B, Chapter 111, Tax Code, is amended
 2-46 by adding Section 111.0611 to read as follows:

2-47 Sec. 111.0611. PERSONAL LIABILITY FOR FRAUDULENT TAX
 2-48 EVASION. (a) An officer, manager, or director of a corporation,
 2-49 association, or limited liability company, a partner of a general
 2-50 partnership, or a managing general partner of a limited partnership
 2-51 or limited liability partnership who, as an officer, manager,
 2-52 director, or partner, took an action or participated in a
 2-53 fraudulent scheme or fraudulent plan to evade the payment of taxes
 2-54 due under Title 2 or 3 is personally liable for the taxes and any
 2-55 penalty and interest due. The personal liability of an individual
 2-56 includes liability for the additional 50 percent fraud penalty
 2-57 provided by Section 111.061(b). The comptroller shall assess
 2-58 individuals liable under this section in the same manner as other
 2-59 persons or entities may be assessed under this chapter.

2-60 (b) For purposes of this section, actions that may indicate
 2-61 the existence of a fraudulent scheme or a fraudulent plan to evade
 2-62 the payment of taxes include:

2-63 (1) filing, or causing to be filed, a false or
 2-64 fraudulent tax return or report with the comptroller on behalf of
 2-65 the business entity;

2-66 (2) intentionally failing to file a tax return,
 2-67 report, or other required document with the comptroller when the
 2-68 business entity is under a legal obligation to file;

2-69 (3) filing, or causing to be filed, a tax return or

3-1 report with the comptroller on behalf of the business entity that
 3-2 contains an intentionally false statement that results in the
 3-3 amount of the tax due exceeding the amount of tax reported by 25
 3-4 percent or more; and

3-5 (4) altering, destroying, or concealing any record,
 3-6 document, or thing, presenting to the comptroller any altered or
 3-7 fraudulent record, document, or thing, or otherwise engaging in
 3-8 fraudulent conduct with the intent to affect the course or outcome
 3-9 of a comptroller audit or investigation, a redetermination hearing,
 3-10 or another proceeding involving the comptroller.

3-11 (c) To the extent the comptroller can verify and secure
 3-12 sufficient unencumbered assets of the corporation, association, or
 3-13 partnership to satisfy the liability, an individual's personal
 3-14 liability under Subsection (a) is limited to the amount by which the
 3-15 total tax, penalty, and interest due under this section exceeds
 3-16 those assets.

3-17 SECTION 7. Section 113.106, Tax Code, is amended by adding
 3-18 Subsections (e) and (f) to read as follows:

3-19 (e) A person must bring suit to determine the validity of a
 3-20 state tax lien not later than the 10th anniversary of the date the
 3-21 lien was filed. If more than one state tax lien has been filed
 3-22 relating to the same tax liability, the 10-year limitation period
 3-23 provided by this subsection is calculated from the date of the
 3-24 filing of the first lien relating to the liability.

3-25 (f) A taxpayer is presumed to have received proper notice of
 3-26 the taxpayer's tax liability if the notice is delivered to the
 3-27 taxpayer's last address of record with the comptroller. The
 3-28 taxpayer may rebut the presumption by presenting substantive
 3-29 evidence that demonstrates that notice of the tax liability was not
 3-30 received. If the taxpayer rebuts the presumption of receipt of
 3-31 proper notice with evidence the comptroller considers
 3-32 satisfactory, the period of limitations for filing suit provided by
 3-33 Subsection (e) does not apply.

3-34 SECTION 8. Subchapter C, Chapter 152, Tax Code, is amended
 3-35 by adding Section 152.0472 to read as follows:

3-36 Sec. 152.0472. DETERMINATION OF WHETHER LOAN IS FACTORED,
 3-37 ASSIGNED, OR TRANSFERRED. (a) A seller is not considered to have
 3-38 factored, assigned, or transferred a loan under Section 152.047(g)
 3-39 if:

3-40 (1) a loan through a seller is pledged as security for
 3-41 the sale of bonds:

3-42 (A) to a qualified institutional buyer, as that
 3-43 term is defined by 17 C.F.R. Section 230.144A, that is not
 3-44 affiliated to the seller;

3-45 (B) to an institutional accredited investor, as
 3-46 that term is defined by 17 C.F.R. Section 230.501(a)(1), (2), (3),
 3-47 or (7), that is not affiliated to the seller; or

3-48 (C) in a public offering;

3-49 (2) the right to receive payments and the risk of loss
 3-50 on nonpayment remains with the seller or an affiliated collection
 3-51 entity acting as agent of the seller; and

3-52 (3) bondholders receive only interest and principal.

3-53 (b) Notwithstanding Subsection (a), the seller may elect to
 3-54 pay all unpaid tax imposed under this chapter on the total
 3-55 consideration. A seller that makes this election is entitled to a
 3-56 credit or reimbursement for the taxes paid under this chapter on the
 3-57 remaining unpaid balance of the contract for which the seller has
 3-58 not received payment or has not otherwise collected the tax due.
 3-59 The seller shall take the tax credit or reimbursement on the
 3-60 seller's seller-finance return. The tax credit or reimbursement
 3-61 does not accrue interest.

3-62 SECTION 9. Section 183.053(b), Tax Code, is amended to read
 3-63 as follows:

3-64 (b) The total of bonds, certificates of deposit, letters of
 3-65 credit, or other security determined to be sufficient by the
 3-66 comptroller of a permittee subject to the tax imposed by this
 3-67 chapter shall be in an amount that the comptroller determines to be
 3-68 sufficient to protect the fiscal interests of the state. The
 3-69 comptroller may not set the amount of security at less than \$1,000

4-1 or more than the greater of \$100,000 or four times the amount of the
4-2 permittee's average monthly tax liability [\$50,000].

4-3 SECTION 10. This Act takes effect immediately if it
4-4 receives a vote of two-thirds of all the members elected to each
4-5 house, as provided by Section 39, Article III, Texas Constitution.
4-6 If this Act does not receive the vote necessary for immediate
4-7 effect, this Act takes effect September 1, 2007.

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