

BILL ANALYSIS

C.S.H.B. 2654
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2005, the 79th Legislature enacted legislation to increase the motor vehicle sales tax and used the additional revenue for public school financing, decreasing a local school district's reliance on property tax revenue. Beginning October 1, 2006, a provision of the Tax Code relating to the calculation of standard presumptive value took effect. The provision changed how a county tax assessor-collector calculates the motor vehicle tax on private-party purchases of used motor vehicles. Texans who purchase used motor vehicles, including cars, trucks, and motorcycles, from private parties currently owe tax on the standard presumptive value of the vehicle. This value is the calculated price of a vehicle's worth based on similar sales in the region where the vehicle was sold. However, some vehicles are not subject to standard presumptive value taxation, including new vehicles; vehicles purchased from licensed dealers; vehicles purchased at governmental foreclosure auctions; vehicles 25 years old or older; off-road vehicles, such as dirt bikes or all-terrain vehicles; certain salvage or abandoned vehicles; vehicles sold through a mechanic or storage lien; vehicles given as gifts; and even-trade vehicles, when vehicles of equal value are swapped by the owners.

According to the Texas Department of Transportation, the estimated number of private-party used motor vehicle transactions claimed as a gift for tax purposes in the fiscal year ending September 30, 2006, was more than 300,000 before the tax law changed in October 2006. With an average vehicle gift value of \$10,000, it is estimated that this gift exception resulted in a loss of more than \$212 million in fiscal year 2006. After the standard presumptive value calculation took effect in 2006, the total number of gift transfers increased by 17 percent. The total number of motor vehicle gift transactions for the fiscal year ending September 30, 2008, increased by 22 percent. It is estimated that since 2006, more than \$60 million in motor vehicle tax revenue has been lost.

A loophole exists that can be used strategically by individuals to avoid paying sales taxes on motor vehicle transactions. Requiring a notary's acknowledgement that the parties to such a transaction appear and identify themselves may be an effective fraud prevention measure. A notary's duty to ensure that parties enter into a transaction knowingly and are aware of the significance of the notarized document may also mitigate the possibility of fraud.

C.S.H.B. 2654 expands the definition of "sale," specifies circumstances under which the tax imposed on the recipient of a gift of a motor vehicle applies, adds requirements for the joint statement filed on transfer of a motor vehicle, in the case of a gift, and requires such a joint statement to be notarized.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2654 amends the Tax Code to specify that the tax imposed on the recipient of a gift of a motor vehicle applies only if the person receiving the motor vehicle receives the vehicle from the person's spouse, parent or stepparent, grandparent or grandchild, child or stepchild, sibling, guardian, or from a decedent's estate, or if the person is a 501(c)(3) organization exempt from federal income taxation and the vehicle will be used for the purposes of the exempt organization.

C.S.H.B. 2654 amends the definition of "sale," under provisions relating to the motor vehicle sales and use tax, to include a transaction in which a motor vehicle is transferred to another person without payment of consideration and that does not qualify as a gift.

C.S.H.B. 2654 amends provisions relating to the joint statement filed in connection with the transfer of a motor vehicle, to require the principal parties, if ownership is transferred as the result of a gift, to make a joint statement describing the nature of the transaction and the relationship between the principal parties. The bill requires such a joint statement to be notarized.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2654 adds a provision not included in the original amending the definition of "sale." The substitute adds provisions not included in the original to specify that provisions imposing a tax on the recipient of a gift of a motor vehicle apply only if the person receiving the motor vehicle receives the motor vehicle from specified relatives, a guardian, a decedent's estate, or if the recipient is a 501(c)(3) tax-exempt organization. The substitute adds provisions not included in the original requiring the principal parties, if the ownership of a motor vehicle is transferred as the result of a gift, to make a joint statement describing the nature of the transaction and the relationship between them.