

BILL ANALYSIS

Senate Research Center
82R20137 ALL-F

H.B. 2048
By: Lyne (Deuell)
Finance
5/13/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Local governments have limited authority to audit and collect delinquent hotel occupancy taxes under their jurisdiction. When a municipality or county is made aware of a failure to collect the tax, file a tax report as required, or pay the tax when due, the municipality or county often will discover a corresponding tax delinquency by the same hotel operator or lodging provider with regard to the state hotel occupancy tax as well. However, a municipality or county currently has no incentive to share that information with the State of Texas.

H.B. 2048 addresses these matters by clarifying or establishing municipality and county authority with respect to local audits of hotels within their respective jurisdictions and providing incentives to encourage local governments to share their audit findings with the comptroller of public accounts when such audits discover a concurrent state hotel occupancy tax delinquency.

H.B. 2048 amends current law relating to the collection and enforcement of state and local hotel occupancy taxes.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 156, Tax Code, by adding Section 156.2513, as follows:

Sec. 156.2513. ALLOCATION OF REVENUE TO CERTAIN MUNICIPALITIES AND COUNTIES. Requires the comptroller of public accounts (comptroller), not later than the last day of the month following a calendar quarter, to:

- (1) compute the amount of revenue, excluding penalties and interest, derived from the collection of taxes imposed by this chapter that resulted from documentation or other information described by Section 351.008 or 352.008; and
- (2) issue a warrant drawn on the general revenue fund in the amount of 20 percent of the revenue computed under Subdivision (1) to the municipality or county that provided the documentation or other information.

SECTION 2. Amends Sections 351.004(a), (a-1), (a-2), and (a-3), Tax Code, as follows:

(a) Authorizes the municipality, rather than the municipal attorney or other attorney acting for the municipality, to bring suit against a person who is required to collect the tax imposed by this chapter and pay the collections over to the municipality, and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed, as applicable, as provided by the court's order. Provides that in addition to the amount of any tax owed under this chapter, the person is liable to the municipality for:

- (1) the municipality's reasonable attorney's fees;
- (2) the costs of an audit conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:
 - (A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and
 - (B) the municipality has not received a disbursement from the comptroller as provided by Section 156.2513 related to the person's concurrent state tax delinquency described by Section 351.008; and
- (3) a penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter.

(a-1) Authorizes the municipality, rather than the municipal attorney or other attorney acting for the municipality, if a person required to file a tax report under this chapter does not file the report as required by the municipality, to determine the amount of tax due under this chapter by:

- (1) conducting an audit of each hotel in relation to which the person did not file the report as required by the municipality; or
- (2) using the tax report filed for the appropriate reporting period under Section 156.151 (Report and Payment) in relation to that hotel.

(a-2) Authorizes the municipality, rather than the municipal attorney or other attorney acting for the municipality, if the person did not file a tax report under Section 156.151 for that reporting period in relation to that hotel, to estimate the amount of tax due by using the tax reports in relation to that hotel filed during the previous calendar year under this chapter or Section 156.151.

(a-3) Authorizes a municipality to directly perform an audit authorized by this section or contract with another person to perform the audit on an hourly rate or fixed-fee basis. Requires a municipality to provide at least 30 days' written notice to a person who is required to collect the tax imposed by this chapter with respect to a hotel before conducting an audit of the hotel under this section.

SECTION 3. Amends Subchapter A, Chapter 351, Tax Code, by adding Section 351.008, as follows:

Sec. 351.008. CONCURRENT STATE TAX DELINQUENCY. (a) Requires a municipality, if, as a result of an audit conducted under Section 351.004 (Tax Collection), the municipality obtains documentation or other information showing a failure to collect or pay when due both the tax imposed by this chapter and the tax imposed by Chapter 156 (Hotel Occupancy Tax) on a person who pays for the right to occupy a room or space in a hotel, to notify and submit the relevant information to the comptroller.

(b) Requires the comptroller to review the information submitted by a municipality under Subsection (a) and determine whether to proceed with collection and enforcement efforts. Requires the comptroller, if the information results in the collection of a delinquent tax under Chapter 156, to distribute a percentage of the amount collected to the municipality as provided by Section 156.2513 to defray the cost of the municipal audit.

SECTION 4. Amends Section 352.004, Tax Code, by adding Subsection (e), as follows:

(e) Authorizes the county, if a person required to file a tax report under this chapter does not file the report as required by the county, to determine the amount of tax due under this chapter by conducting an audit of each hotel in relation to which the person did not

file the report as required by the county. Authorizes a county to directly perform an audit authorized under this subsection or contract with another person to perform the audit on an hourly rate or fixed-fee basis. Requires a county to provide at least 30 days' written notice to a person who is required to collect the tax imposed by this chapter with respect to a hotel before conducting an audit of the hotel under this subsection.

SECTION 5. Amends Subchapter A, Chapter 352, Tax Code, by adding Section 352.008, as follows:

Sec. 352.008. CONCURRENT STATE TAX DELINQUENCY. (a) Requires a county, if, as a result of an audit conducted under Section 352.004, the county obtains documentation or other information showing a failure to collect or pay when due both the tax imposed by this chapter and the tax imposed by Chapter 156 on a person who pays for the right to occupy a room or space in a hotel, to notify and submit the relevant information to the comptroller.

(b) Requires the comptroller to review the information submitted by a county under Subsection (a) and determine whether to proceed with collection and enforcement efforts. Requires the comptroller, if the information results in the collection of a delinquent tax under Chapter 156, to distribute a percentage of the amount collected to the county as provided by Section 156.2513 to defray the cost of the county audit.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2011.