

BILL ANALYSIS

C.S.H.B. 2048
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Local governments have limited authority to audit and collect delinquent hotel occupancy taxes under their jurisdictions. 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.

C.S.H.B. 2048 seeks to address 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.

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. 2048 amends the Tax Code to specify that the authority to take certain actions against a person who is required to collect the municipal hotel occupancy tax and pay the collections over to the municipality and who has failed to file a tax report or pay the tax when due, including actions such as bringing suit to collect unpaid taxes, enjoining the person from operating a hotel in the municipality, and conducting an audit of each hotel in relation to which the person failed to file the required report or using tax reports filed in relation to the hotel to determine the amount of tax due, is vested in the municipality, rather than in the municipal attorney or other attorney acting for the municipality. The bill makes such a person's liability to the municipality for the costs of an audit contingent on the municipality having not received a disbursement from the comptroller of public accounts as provided by the bill's provisions related to the person's concurrent state tax delinquency and makes the person's liability to the municipality for a certain penalty contingent on the tax having been delinquent for at least one complete municipal fiscal quarter. The bill authorizes a municipality to perform such an audit directly or to contract with another person to perform the audit on an hourly rate or fixed-fee basis. The bill requires a municipality to provide at least 30 days' written notice to a person who is required to collect the tax with respect to a hotel before conducting an audit of the hotel.

C.S.H.B. 2048 authorizes a county, if a person required to file a county hotel occupancy tax report does not file the report as required by the county, to determine the amount of tax due by conducting an audit of each hotel in relation to which the person did not file the required report. The bill authorizes a county to perform the audit directly or to contract with another person to perform the audit on an hourly rate or fixed-fee basis. The bill requires a county to provide at least 30 days' written notice to a person who is required to collect the tax with respect to a hotel

before conducting an audit of the hotel.

C.S.H.B. 2048 requires a municipality or county to notify and submit the relevant audit information to the comptroller of public accounts if, as a result of an audit, the municipality or county obtains documentation or other information showing a failure to collect or pay when due both the state hotel occupancy tax and the municipal or county hotel occupancy tax, as applicable, on a paying hotel guest. The bill requires the comptroller to review the information submitted and determine whether to proceed with collection and enforcement efforts. The bill requires the comptroller, if the information results in the collection of a delinquent state hotel occupancy tax, to distribute a percentage of the amount collected to the municipality or county, as applicable, to defray the cost of the municipal or county audit.

C.S.H.B. 2048 requires the comptroller, not later than the last day of the month following a calendar quarter, to compute the amount of revenue, excluding penalties and interest, derived from the collection of state hotel occupancy taxes that resulted from documentation or other information received from a municipality or county indicating a municipal or county hotel occupancy tax delinquency concurrent with a state hotel occupancy tax delinquency and to issue a warrant drawn on the general revenue fund in the amount of 20 percent of the revenue computed to the municipality or county that provided the documentation or other information.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2048 differs from the original by retaining a statutory provision making the liability of a certain person to a municipality for the costs of an audit of each hotel in relation to which the person failed to file a required municipal hotel occupancy tax report contingent on the tax having been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted, whereas the original removes that condition. The substitute contains a provision not included in the original making such a person's liability to the municipality for the costs of an audit contingent on the municipality having not received a disbursement from the comptroller of public accounts as provided by the bill's provisions related to the person's concurrent state tax delinquency. The substitute differs from the original by making such a person's liability to the municipality for a certain penalty contingent on the tax having been delinquent for at least one complete municipal fiscal quarter, whereas the original does not include that condition.

C.S.H.B. 2048 differs from the original by specifying that a municipality's or county's contract with another person to perform an audit of a hotel be on an hourly rate or fixed-fee basis whereas the original does not make that specification. The substitute contains a provision not included in the original requiring a municipality or a county to provide at least 30 days' written notice to a person who is required to collect the municipal or county hotel occupancy tax with respect to a hotel before conducting an audit of the hotel.

C.S.H.B. 2048 omits provisions included in the original prohibiting a municipality or county from receiving a percentage of a certain amount of delinquent tax collected by the comptroller if information submitted by the municipality or the county to the comptroller showing the tax to be delinquent was obtained as a result of an audit performed on a contingent fee basis.

C.S.H.B. 2048 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and making clarifying changes and technical corrections to the law.