

BILL ANALYSIS

C.S.H.B. 2476
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that the Texas Legislature enacted legislation in the 1990s to provide a separate section of the Tax Code for heavy equipment dealers similar to provisions applicable to car and boat dealers. Since that time, it has been noted that many taxpayers and tax assessors have experienced confusion and litigation regarding the applicability, calculation, and uniformity of business property taxes relating to businesses who primarily rent or lease heavy equipment. C.S.H.B. 2476 seeks to clarify property tax law regarding businesses that rent or lease heavy equipment.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2476 amends the Tax Code to establish that, for the purpose of the computation of property tax on the market value of a dealer's heavy equipment inventory, the sales price of an item of heavy equipment that is sold during the preceding tax year after being leased or rented for a portion of that same tax year is considered to be the sum of the sales price of the item plus the total lease and rental payments received for the item in the preceding tax year. The bill removes a provision specifying that a sale is considered to occur when possession of an item of heavy equipment is transferred from the dealer to the purchaser.

C.S.H.B. 2476 adds a dealer's leasing or renting an item of heavy equipment to a person other than a dealer in the 12-month period ending on December 31 of the preceding year to the basis for a presumption that a dealer is the owner of a dealer's heavy equipment inventory on January 1.

C.S.H.B. 2476 requires an owner of heavy equipment, for purposes of prepayment of taxes by heavy equipment dealers and in the case of a lease or rental of such equipment, to assign a unit property tax on each item of heavy equipment leased or rented, which is determined by multiplying the monthly lease or rental payment received for the item by the unit property tax factor. The bill requires the owner, if the transaction is a lease or rental, to collect the unit property tax from the lessee or renter at the time the lessee or renter submits payment for the lease or rental. The bill requires the owner of the equipment to state the amount of the unit property tax assigned as a separate line item on an invoice. The bill requires the tax collector to provide a credit or refund to an owner of heavy equipment if the owner determines that the owner accidentally paid taxes on a sale that is a fleet transaction. The bill makes provisions for the prepayment of taxes on heavy equipment relating to the deposit of unit property taxes assigned to heavy equipment items sold from a dealer's heavy equipment inventory and to the completion and filing of heavy equipment inventory statement forms applicable to heavy equipment leased or rented from the dealer's inventory. The bill, in provisions relating to penalties for failure to file a required heavy equipment inventory statement, provides that a tax

lien attaches to the dealer's business personal property, rather than to such property of the owner, to secure payment of the penalty.

C.S.H.B. 2476, in provisions relating to a dealer's heavy equipment inventory and in provisions relating to the prepayment of taxes by heavy equipment dealers, authorizes, rather than requires, the appropriate district attorney, criminal district attorney, or county attorney to collect, in the name of the collector, rather than the chief appraiser, the penalty established for a failure to file a declaration of a dealer's heavy equipment inventory with the chief appraiser, a failure to file a heavy equipment tax statement with the tax collector, or a failure to file either the declaration or the statement on time, as applicable. The bill authorizes the chief appraiser to collect the penalty in the name of the chief appraiser and authorizes the chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney to sue to enforce compliance. The bill includes an action for injunctive relief among the actions for which venue is in the county in which a violation occurred or in which the owner's principal place of business or residence is located. The bill authorizes the court to award attorney's fees to a chief appraiser, district attorney, criminal district attorney, or county attorney who prevails in a suit to collect a penalty or enforce compliance.

C.S.H.B. 2476 redefines "dealer," "dealer's heavy equipment inventory," "sales price," and "total annual sales." The bill specifies that the term "subsequent sale" does not include a rental or lease with an unexercised purchase option or without a purchase option and makes conforming changes.

C.S.H.B. 2476 repeals the following provisions of the Tax Code:

- Section 23.1241(i)
- Section 23.1242(l)

EFFECTIVE DATE

January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2476 differs from the original in a nonsubstantive way by making a conforming change to the definition of "dealer."

C.S.H.B. 2476 differs from the original by including a statutory provision defining "sales price" for a lease or rental as the total amount of the lease or rental payments, whereas the original removes that statutory provision. The substitute contains a provision not included in the original redefining "subsequent sale." The substitute omits a provision included in the original repealing certain definitions and differs from the original by making changes to conform to this omission.

C.S.H.B. 2476 differs from the original by requiring the owner to collect the unit property tax from the lessee or renter at the time the lessee or renter submits payment for the lease or rental if the transaction is a lease or rental, whereas the original requires the tax to be collected if the transaction is a lease or a rental with an option to purchase. The substitute contains a provision not included in the original requiring an owner of heavy equipment, for purposes of prepayment of taxes by heavy equipment dealers and in the case of a lease or rental, to assign a unit property tax to each item of heavy equipment leased or rented. The substitute contains a provision not included in the original requiring the tax collector to provide a credit or refund to an owner of heavy equipment if the owner determines that the owner accidentally paid taxes on a sale that is a fleet transaction.

C.S.H.B. 2476 omits provisions included in the original establishing and setting out requirements for registry of persons dealing in heavy equipment and providing for the meaning of "heavy

equipment" by reference.

C.S.H.B. 2476 omits provisions included in the original making the original's provisions, other than the requirement for the development and maintenance of a heavy equipment dealer registry, effective January 1, 2012, and providing that a person is not required to register or apply for registration as a heavy equipment dealer before the same date. The substitute differs from the original by making the bill effective January 1, 2012, whereas the original makes the bill effective September 1, 2011, except as otherwise provided.