

By: Lyne

H.B. No. 2048

Substitute the following for H.B. No. 2048:

By: Hilderbran

C.S.H.B. No. 2048

A BILL TO BE ENTITLED

AN ACT

relating to the collection and enforcement of state and local hotel occupancy taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 156, Tax Code, is amended by adding Section 156.2513 to read as follows:

Sec. 156.2513. ALLOCATION OF REVENUE TO CERTAIN MUNICIPALITIES AND COUNTIES. Not later than the last day of the month following a calendar quarter, the comptroller shall:

(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. Sections 351.004(a), (a-1), (a-2), and (a-3), Tax Code, are amended to read as follows:

(a) The ~~[municipal attorney or other attorney acting for the]~~ municipality may 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

1 from operating a hotel in the municipality until the tax is paid or
2 the report filed, as applicable, as provided by the court's
3 order. In addition to the amount of any tax owed under this
4 chapter, the person is liable to the municipality for:

- 5 (1) the municipality's reasonable attorney's fees;
- 6 (2) the costs of an audit conducted under Subsection
7 (a-1)(1), as determined by the municipality using a reasonable
8 rate, but only if:

9 (A) the tax has been delinquent for at least two
10 complete municipal fiscal quarters at the time the audit is
11 conducted; and

12 (B) the municipality has not received a
13 disbursement from the comptroller as provided by Section 156.2513
14 related to the person's concurrent state tax delinquency described
15 by Section 351.008; and

- 16 (3) a penalty equal to 15 percent of the total amount
17 of the tax owed if the tax has been delinquent for at least one
18 complete municipal fiscal quarter.

19 (a-1) If a person required to file a tax report under this
20 chapter does not file the report as required by the municipality,
21 the [~~municipal attorney or other attorney acting for the~~]
22 municipality may determine the amount of tax due under this chapter
23 by:

- 24 (1) conducting an audit of each hotel in relation to
25 which the person did not file the report as required by the
26 municipality; or

- 27 (2) using the tax report filed for the appropriate

1 reporting period under Section 156.151 in relation to that hotel.

2 (a-2) If the person did not file a tax report under Section
3 156.151 for that reporting period in relation to that hotel, the
4 [~~municipal attorney or other attorney acting for the~~] municipality
5 may estimate the amount of tax due by using the tax reports in
6 relation to that hotel filed during the previous calendar year
7 under this chapter or Section 156.151. An estimate made under this
8 subsection is prima facie evidence of the amount of tax due for that
9 period in relation to that hotel.

10 (a-3) The authority to conduct an audit under this section
11 is in addition to any other audit authority provided by statute,
12 charter, or ordinance. A municipality may directly perform an
13 audit authorized by this section or contract with another person to
14 perform the audit on an hourly rate or fixed-fee basis. A
15 municipality shall provide at least 30 days' written notice to a
16 person who is required to collect the tax imposed by this chapter
17 with respect to a hotel before conducting an audit of the hotel
18 under this section.

19 SECTION 3. Subchapter A, Chapter 351, Tax Code, is amended
20 by adding Section 351.008 to read as follows:

21 Sec. 351.008. CONCURRENT STATE TAX DELINQUENCY. (a) If, as
22 a result of an audit conducted under Section 351.004, a
23 municipality obtains documentation or other information showing a
24 failure to collect or pay when due both the tax imposed by this
25 chapter and the tax imposed by Chapter 156 on a person who pays for
26 the right to occupy a room or space in a hotel, the municipality
27 shall notify and submit the relevant information to the

1 comptroller.

2 (b) The comptroller shall review the information submitted
3 by a municipality under Subsection (a) and determine whether to
4 proceed with collection and enforcement efforts. If the
5 information results in the collection of a delinquent tax under
6 Chapter 156, the comptroller shall distribute a percentage of the
7 amount collected to the municipality as provided by Section
8 156.2513 to defray the cost of the municipal audit.

9 SECTION 4. Section 352.004, Tax Code, is amended by adding
10 Subsection (e) to read as follows:

11 (e) If a person required to file a tax report under this
12 chapter does not file the report as required by the county, the
13 county may determine the amount of tax due under this chapter by
14 conducting an audit of each hotel in relation to which the person
15 did not file the report as required by the county. A county may
16 directly perform an audit authorized under this subsection or
17 contract with another person to perform the audit on an hourly rate
18 or fixed-fee basis. A county shall provide at least 30 days'
19 written notice to a person who is required to collect the tax
20 imposed by this chapter with respect to a hotel before conducting an
21 audit of the hotel under this subsection.

22 SECTION 5. Subchapter A, Chapter 352, Tax Code, is amended
23 by adding Section 352.008 to read as follows:

24 Sec. 352.008. CONCURRENT STATE TAX DELINQUENCY. (a) If, as
25 a result of an audit conducted under Section 352.004, a county
26 obtains documentation or other information showing a failure to
27 collect or pay when due both the tax imposed by this chapter and the

1 tax imposed by Chapter 156 on a person who pays for the right to
2 occupy a room or space in a hotel, the county shall notify and
3 submit the relevant information to the comptroller.

4 (b) The comptroller shall review the information submitted
5 by a county under Subsection (a) and determine whether to proceed
6 with collection and enforcement efforts. If the information
7 results in the collection of a delinquent tax under Chapter 156, the
8 comptroller shall distribute a percentage of the amount collected
9 to the county as provided by Section 156.2513 to defray the cost of
10 the county audit.

11 SECTION 6. The change in law made by this Act applies only
12 to an audit performed by a municipality or county on or after the
13 effective date of this Act. An audit performed by a municipality or
14 county before the effective date of this Act is governed by the law
15 in effect immediately before that date, and that law is continued in
16 effect for that purpose.

17 SECTION 7. This Act takes effect September 1, 2011.