

1-1 By: Lyne (Senate Sponsor - Deuell) H.B. No. 2048
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Finance;
1-4 May 17, 2011, reported favorably by the following vote: Yeas 14,
1-5 Nays 0; May 17, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the collection and enforcement of state and local hotel
1-9 occupancy taxes.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter F, Chapter 156, Tax Code, is amended
1-12 by adding Section 156.2513 to read as follows:

1-13 Sec. 156.2513. ALLOCATION OF REVENUE TO CERTAIN
1-14 MUNICIPALITIES AND COUNTIES. Not later than the last day of the
1-15 month following a calendar quarter, the comptroller shall:

1-16 (1) compute the amount of revenue, excluding penalties
1-17 and interest, derived from the collection of taxes imposed by this
1-18 chapter that resulted from documentation or other information
1-19 described by Section 351.008 or 352.008; and

1-20 (2) issue a warrant drawn on the general revenue fund
1-21 in the amount of 20 percent of the revenue computed under
1-22 Subdivision (1) to the municipality or county that provided the
1-23 documentation or other information.

1-24 SECTION 2. Sections 351.004(a), (a-1), (a-2), and (a-3),
1-25 Tax Code, are amended to read as follows:

1-26 (a) ~~The [municipal attorney or other attorney acting for~~
1-27 ~~the] municipality may bring suit against a person who is required to~~
1-28 ~~collect the tax imposed by this chapter and pay the collections over~~
1-29 ~~to the municipality, and who has failed to file a tax report or pay~~
1-30 ~~the tax when due, to collect the tax not paid or to enjoin the person~~
1-31 ~~from operating a hotel in the municipality until the tax is paid or~~
1-32 ~~the report filed, as applicable, as provided by the court's~~
1-33 ~~order. In addition to the amount of any tax owed under this~~
1-34 ~~chapter, the person is liable to the municipality for:~~

1-35 (1) ~~the municipality's reasonable attorney's fees;~~

1-36 (2) ~~the costs of an audit conducted under Subsection~~
1-37 ~~(a-1)(1), as determined by the municipality using a reasonable~~
1-38 ~~rate, but only if:~~

1-39 (A) ~~the tax has been delinquent for at least two~~
1-40 ~~complete municipal fiscal quarters at the time the audit is~~
1-41 ~~conducted; and~~

1-42 (B) ~~the municipality has not received a~~
1-43 ~~disbursement from the comptroller as provided by Section 156.2513~~
1-44 ~~related to the person's concurrent state tax delinquency described~~
1-45 ~~by Section 351.008; and~~

1-46 (3) ~~a penalty equal to 15 percent of the total amount~~
1-47 ~~of the tax owed if the tax has been delinquent for at least one~~
1-48 ~~complete municipal fiscal quarter.~~

1-49 (a-1) ~~If a person required to file a tax report under this~~
1-50 ~~chapter does not file the report as required by the municipality,~~
1-51 ~~the [municipal attorney or other attorney acting for the]~~
1-52 ~~municipality may determine the amount of tax due under this chapter~~
1-53 ~~by:~~

1-54 (1) ~~conducting an audit of each hotel in relation to~~
1-55 ~~which the person did not file the report as required by the~~
1-56 ~~municipality; or~~

1-57 (2) ~~using the tax report filed for the appropriate~~
1-58 ~~reporting period under Section 156.151 in relation to that hotel.~~

1-59 (a-2) ~~If the person did not file a tax report under Section~~
1-60 ~~156.151 for that reporting period in relation to that hotel, the~~
1-61 ~~[municipal attorney or other attorney acting for the] municipality~~
1-62 ~~may estimate the amount of tax due by using the tax reports in~~
1-63 ~~relation to that hotel filed during the previous calendar year~~
1-64 ~~under this chapter or Section 156.151. An estimate made under this~~

2-1 subsection is prima facie evidence of the amount of tax due for that
2-2 period in relation to that hotel.

2-3 (a-3) The authority to conduct an audit under this section
2-4 is in addition to any other audit authority provided by statute,
2-5 charter, or ordinance. A municipality may directly perform an
2-6 audit authorized by this section or contract with another person to
2-7 perform the audit on an hourly rate or fixed-fee basis. A
2-8 municipality shall provide at least 30 days' written notice to a
2-9 person who is required to collect the tax imposed by this chapter
2-10 with respect to a hotel before conducting an audit of the hotel
2-11 under this section.

2-12 SECTION 3. Subchapter A, Chapter 351, Tax Code, is amended
2-13 by adding Section 351.008 to read as follows:

2-14 Sec. 351.008. CONCURRENT STATE TAX DELINQUENCY. (a) If,
2-15 as a result of an audit conducted under Section 351.004, a
2-16 municipality obtains documentation or other information showing a
2-17 failure to collect or pay when due both the tax imposed by this
2-18 chapter and the tax imposed by Chapter 156 on a person who pays for
2-19 the right to occupy a room or space in a hotel, the municipality
2-20 shall notify and submit the relevant information to the
2-21 comptroller.

2-22 (b) The comptroller shall review the information submitted
2-23 by a municipality under Subsection (a) and determine whether to
2-24 proceed with collection and enforcement efforts. If the
2-25 information results in the collection of a delinquent tax under
2-26 Chapter 156, the comptroller shall distribute a percentage of the
2-27 amount collected to the municipality as provided by Section
2-28 156.2513 to defray the cost of the municipal audit.

2-29 SECTION 4. Section 352.004, Tax Code, is amended by adding
2-30 Subsection (e) to read as follows:

2-31 (e) If a person required to file a tax report under this
2-32 chapter does not file the report as required by the county, the
2-33 county may determine the amount of tax due under this chapter by
2-34 conducting an audit of each hotel in relation to which the person
2-35 did not file the report as required by the county. A county may
2-36 directly perform an audit authorized under this subsection or
2-37 contract with another person to perform the audit on an hourly rate
2-38 or fixed-fee basis. A county shall provide at least 30 days'
2-39 written notice to a person who is required to collect the tax
2-40 imposed by this chapter with respect to a hotel before conducting an
2-41 audit of the hotel under this subsection.

2-42 SECTION 5. Subchapter A, Chapter 352, Tax Code, is amended
2-43 by adding Section 352.008 to read as follows:

2-44 Sec. 352.008. CONCURRENT STATE TAX DELINQUENCY. (a) If,
2-45 as a result of an audit conducted under Section 352.004, a county
2-46 obtains documentation or other information showing a failure to
2-47 collect or pay when due both the tax imposed by this chapter and the
2-48 tax imposed by Chapter 156 on a person who pays for the right to
2-49 occupy a room or space in a hotel, the county shall notify and
2-50 submit the relevant information to the comptroller.

2-51 (b) The comptroller shall review the information submitted
2-52 by a county under Subsection (a) and determine whether to proceed
2-53 with collection and enforcement efforts. If the information
2-54 results in the collection of a delinquent tax under Chapter 156, the
2-55 comptroller shall distribute a percentage of the amount collected
2-56 to the county as provided by Section 156.2513 to defray the cost of
2-57 the county audit.

2-58 SECTION 6. The change in law made by this Act applies only
2-59 to an audit performed by a municipality or county on or after the
2-60 effective date of this Act. An audit performed by a municipality or
2-61 county before the effective date of this Act is governed by the law
2-62 in effect immediately before that date, and that law is continued in
2-63 effect for that purpose.

2-64 SECTION 7. This Act takes effect September 1, 2011.

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