

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the appraisal for ad valorem tax purposes of certain
3 dealer's heavy equipment inventory; providing penalties.

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

5 SECTION 1. Sections 23.1241(a)(1), (2), (7), (8), and (9),
6 Tax Code, are amended to read as follows:

7 (1) "Dealer" means a person engaged in the business in
8 this state of selling, leasing, or renting heavy equipment.

9 (2) "Dealer's heavy equipment inventory" means all
10 items of heavy equipment that a dealer holds for sale, lease, or
11 rent during a 12-month period [at retail]. [~~The term includes items~~
12 ~~of heavy equipment that are leased or rented but subject to a~~
13 ~~purchase option by the lessee or renter.~~]

14 (7) "Sales price" means:

15 (A) the total amount of money paid or to be paid
16 to a dealer for the purchase of an item of heavy equipment; or

17 (B) for a lease or rental [~~with an option to~~
18 ~~purchase~~], the total amount of the lease or rental payments [~~plus~~
19 ~~any final consideration, excluding interest~~].

20 (8) "Subsequent sale" means a dealer-financed sale of
21 an item of heavy equipment that, at the time of the sale, has been
22 the subject of a dealer-financed sale from the same dealer's heavy
23 equipment inventory in the same calendar year. The term does not
24 include a rental or lease with an unexercised purchase option or

1 without a purchase option.

2 (9) "Total annual sales" means the total of the:

3 (A) sales price for each sale from a dealer's
4 heavy equipment inventory in a 12-month period; and

5 (B) lease and rental payments received for each
6 lease or rental of heavy equipment inventory in a 12-month period.

7 SECTION 2. Section 23.1241, Tax Code, is amended by
8 amending Subsections (b), (e), and (j) and adding Subsection (b-1)
9 to read as follows:

10 (b) For the purpose of the computation of property tax, [+
11 [(1)] the market value of a dealer's heavy equipment
12 inventory on January 1 is the total annual sales, less sales to
13 dealers, fleet transactions, and subsequent sales, for the 12-month
14 period corresponding to the preceding tax year, divided by 12 [+ and

15 [(2) a sale is considered to occur when possession of
16 an item of heavy equipment is transferred from the dealer to the
17 purchaser].

18 (b-1) For the purpose of the computation of property tax on
19 the market value of the dealer's heavy equipment inventory, the
20 sales price of an item of heavy equipment that is sold during the
21 preceding tax year after being leased or rented for a portion of
22 that same tax year is considered to be the sum of the sales price of
23 the item plus the total lease and rental payments received for the
24 item in the preceding tax year.

25 (e) A dealer is presumed to be an owner of a dealer's heavy
26 equipment inventory on January 1 if, in the 12-month period ending
27 on December 31 of the preceding year, the dealer sold, leased, or

1 rented an item of heavy equipment to a person other than a dealer.
2 The presumption is not rebutted by the fact that a dealer has no
3 item of heavy equipment physically on hand for sale from the
4 dealer's heavy equipment inventory on January 1.

5 (j) In addition to other penalties provided by law, a dealer
6 who fails to file or fails to timely file a declaration required by
7 Subsection (f) shall forfeit a penalty. A tax lien attaches to the
8 dealer's business personal property to secure payment of the
9 penalty. The appropriate district attorney, criminal district
10 attorney, or county attorney may [~~shall~~] collect the penalty
11 established by this section in the name of the [~~chief appraiser or~~]
12 collector. The chief appraiser may collect the penalty in the name
13 of the chief appraiser. The chief appraiser or the appropriate
14 district attorney, criminal district attorney, or county attorney
15 may sue to enforce compliance with this section. Venue of an action
16 brought under this subsection, including an action for injunctive
17 relief, is in the county in which the violation occurred or in the
18 county in which the owner maintains the owner's principal place of
19 business or residence. The court may award attorney's fees to a
20 chief appraiser, district attorney, criminal district attorney, or
21 county attorney who prevails in a suit to collect a penalty or
22 enforce compliance with this section. A penalty forfeited under
23 this subsection is \$1,000 for each month or part of a month in which
24 a declaration is not filed or timely filed after it is due.

25 SECTION 3. Sections 23.1242(b), (d), (e), (f), and (m), Tax
26 Code, are amended to read as follows:

27 (b) Except for an item of heavy equipment sold to a dealer,

1 an item of heavy equipment included in a fleet transaction, ~~[or]~~ an
2 item of heavy equipment that is the subject of a subsequent sale, or
3 an item of heavy equipment that is subject to a lease or rental, an
4 owner or a person who has agreed by contract to pay the owner's
5 current year property taxes levied against the owner's heavy
6 equipment inventory shall assign a unit property tax to each item of
7 heavy equipment sold from a dealer's heavy equipment inventory. In
8 the case of a lease or rental, the owner shall assign a unit
9 property tax to each item of heavy equipment leased or rented. The
10 unit property tax of each item of heavy equipment is determined by
11 multiplying the sales price of the item or the monthly lease or
12 rental payment received for the item, as applicable, by the unit
13 property tax factor. If the transaction is a lease or rental, the
14 owner shall collect the unit property tax from the lessee or renter
15 at the time the lessee or renter submits payment for the lease or
16 rental. The owner of the equipment shall state the amount of the
17 unit property tax assigned as a separate line item on an invoice.
18 On or before the 10th day of each month the owner shall, together
19 with the statement filed by the owner as required by this section,
20 deposit with the collector an amount equal to the total of unit
21 property tax assigned to all items of heavy equipment sold, leased,
22 or rented from the dealer's heavy equipment inventory in the
23 preceding month to which a unit property tax was assigned. The
24 money shall be deposited by the collector to the credit of the
25 owner's escrow account for prepayment of property taxes as provided
26 by this section. An escrow account required by this section is used
27 to pay property taxes levied against the dealer's heavy equipment

1 inventory, and the owner shall fund the escrow account as provided
2 by this subsection.

3 (d) The owner may not withdraw funds in an escrow account
4 created under this section. However, the collector shall provide a
5 credit or refund to an owner if the owner determines that the owner
6 accidentally paid taxes on a sale that is a fleet transaction, as
7 defined by Section 23.1241(a).

8 (e) The comptroller by rule shall adopt a dealer's heavy
9 equipment inventory tax statement form. Each month, a dealer shall
10 complete the form regardless of whether an item of heavy equipment
11 is sold, leased, or rented. A dealer may use no other form for that
12 purpose. The statement may include the information the comptroller
13 considers appropriate but shall include at least the following:

14 (1) a description of each item of heavy equipment
15 sold, leased, or rented including any unique identification or
16 serial number affixed to the item by the manufacturer;

17 (2) the sales price of or lease or rental payment
18 received for the item of heavy equipment, as applicable;

19 (3) the unit property tax of the item of heavy
20 equipment, if any; and

21 (4) the reason no unit property tax is assigned if no
22 unit property tax is assigned.

23 (f) On or before the 10th day of each month, a dealer shall
24 file with the collector the statement covering the sale, lease, or
25 rental of each item of heavy equipment sold, leased, or rented by
26 the dealer in the preceding month. On or before the 10th day of a
27 month following a month in which a dealer does not sell, lease, or

1 rent an item of heavy equipment, the dealer must file the statement
2 with the collector and indicate that no sales, leases, or rentals
3 were made in the prior month. A dealer shall file a copy of the
4 statement with the chief appraiser and retain documentation
5 relating to the disposition of each item of heavy equipment sold and
6 the lease or rental of each item of heavy equipment. A chief
7 appraiser or collector may examine documents held by a dealer as
8 provided by this subsection in the same manner, and subject to the
9 same conditions, as provided by Section 23.1241(g).

10 (m) In addition to other penalties provided by law, a dealer
11 who fails to file or fails to timely file a statement as required by
12 this section shall forfeit a penalty. A tax lien attaches to the
13 dealer's [~~owner's~~] business personal property to secure payment of
14 the penalty. The appropriate district attorney, criminal district
15 attorney, or county attorney may [~~shall~~] collect the penalty
16 established by this section in the name of the [~~chief appraiser or~~]
17 collector. The chief appraiser may collect the penalty in the name
18 of the chief appraiser. The chief appraiser or the appropriate
19 district attorney, criminal district attorney, or county attorney
20 may sue to enforce compliance with this section. Venue of an action
21 brought under this subsection, including an action for injunctive
22 relief, is in the county in which the violation occurred or in the
23 county in which the owner maintains the owner's principal place of
24 business or residence. The court may award attorney's fees to a
25 chief appraiser, district attorney, criminal district attorney, or
26 county attorney who prevails in a suit to collect a penalty or
27 enforce compliance with this section. A penalty forfeited under

1 this subsection is \$500 for each month or part of a month in which a
2 statement is not filed or timely filed after it is due.

3 SECTION 4. Sections 23.1241(i) and 23.1242(1), Tax Code,
4 are repealed.

5 SECTION 5. This Act applies only to ad valorem taxes imposed
6 for a tax year beginning on or after the effective date of this Act.

7 SECTION 6. This Act takes effect January 1, 2012.