

By: Harless

H.B. No. 2476

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Effective January 1, 2012, Sections 23.1241(a)(1), (2), (7), and (9), Tax Code, are amended to read as follows:

(1) "Dealer" means a person engaged in the business in this state of selling, leasing, or renting heavy equipment, regardless of whether the person is registered under Section 23.1243.

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

(7) "Sales price" means ~~[+ [(A)] the total amount of money paid or to be paid to a dealer for the purchase of an item of heavy equipment~~ ~~[, or [(B) for a lease or rental with an option to purchase, the total amount of the lease or rental payments plus any final consideration, excluding interest].~~

(9) "Total annual sales" means the total of the: (A) sales price for each sale from a dealer's

1 heavy equipment inventory in a 12-month period; and

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

4 SECTION 2. Effective January 1, 2012, Section 23.1241, Tax
5 Code, is amended by amending Subsections (b), (e), and (j) and
6 adding Subsection (b-1) to read as follows:

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

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

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

23 (e) A dealer is presumed to be an owner of a dealer's heavy
24 equipment inventory on January 1 if, in the 12-month period ending
25 on December 31 of the preceding year, the dealer sold, leased, or
26 rented an item of heavy equipment to a person other than a dealer.
27 The presumption is not rebutted by the fact that a dealer has no

1 item of heavy equipment physically on hand for sale from the
2 dealer's heavy equipment inventory on January 1.

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

23 SECTION 3. Effective January 1, 2012, Section
24 23.1242(a)(2), Tax Code, is amended to read as follows:

25 (2) "Dealer's heavy equipment inventory,"
26 "declaration," "dealer," "sales price," [~~"subsequent sale,"~~] and
27 "total annual sales" have the meanings assigned those terms by

1 Section 23.1241.

2 SECTION 4. Effective January 1, 2012, Sections 23.1242(b),
3 (e), (f), and (m), Tax Code, are amended to read as follows:

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

1 account required by this section is used to pay property taxes
2 levied against the dealer's heavy equipment inventory, and the
3 owner shall fund the escrow account as provided by this subsection.

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

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

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

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

17 (4) the reason no unit property tax is assigned if no
18 unit property tax is assigned.

19 (f) On or before the 10th day of each month, a dealer shall
20 file with the collector the statement covering the sale, lease, or
21 rental of each item of heavy equipment sold, leased, or rented by
22 the dealer in the preceding month. On or before the 10th day of a
23 month following a month in which a dealer does not sell, lease, or
24 rent an item of heavy equipment, the dealer must file the statement
25 with the collector and indicate that no sales, leases, or rentals
26 were made in the prior month. A dealer shall file a copy of the
27 statement with the chief appraiser and retain documentation

1 relating to the disposition of each item of heavy equipment sold and
2 the lease or rental of each item of heavy equipment. A chief
3 appraiser or collector may examine documents held by a dealer as
4 provided by this subsection in the same manner, and subject to the
5 same conditions, as provided by Section 23.1241(g).

6 (m) In addition to other penalties provided by law, a dealer
7 who fails to file or fails to timely file a statement as required by
8 this section shall forfeit a penalty. A tax lien attaches to the
9 dealer's [~~owner's~~] business personal property to secure payment of
10 the penalty. The appropriate district attorney, criminal district
11 attorney, or county attorney may [~~shall~~] collect the penalty
12 established by this section in the name of the [~~chief appraiser or~~]
13 collector. The chief appraiser may collect the penalty in the name
14 of the chief appraiser. The chief appraiser or the appropriate
15 district attorney, criminal district attorney, or county attorney
16 may sue to enforce compliance with this section. Venue of an action
17 brought under this subsection, including an action for injunctive
18 relief, is in the county in which the violation occurred or in the
19 county in which the owner maintains the owner's principal place of
20 business or residence. The court may award attorney's fees to a
21 chief appraiser, district attorney, criminal district attorney, or
22 county attorney who prevails in a suit to collect a penalty or
23 enforce compliance with this section. A penalty forfeited under
24 this subsection is \$500 for each month or part of a month in which a
25 statement is not filed or timely filed after it is due.

26 SECTION 5. Subchapter B, Chapter 23, Tax Code, is amended by
27 adding Section 23.1243 to read as follows:

1 Sec. 23.1243. REGISTRY OF PERSONS DEALING IN HEAVY
2 EQUIPMENT. (a) In this section, "heavy equipment" has the meaning
3 assigned by Section 23.1241.

4 (b) The comptroller shall develop and maintain a registry
5 containing information on each person who engages in the sale,
6 lease, or rental of more than five items of heavy equipment in a
7 calendar year in this state.

8 (c) A person may not engage in the activity described by
9 Subsection (b) if the person has not registered with the
10 comptroller. A person who is required to register under this
11 subsection shall reapply for registration not later than January 1
12 of each year and, if any of the information required to be provided
13 under Subsection (d) materially changes, not later than the 30th
14 day after the date the change occurs. A person who is registered
15 and who is subsequently not required to register under this section
16 may remove the person's name and information from the registry on
17 request.

18 (d) The comptroller shall adopt rules and forms to implement
19 this section. The rules must require a person who is required to
20 register to provide the person's name, residence address, and
21 business address and the location and general description of the
22 heavy equipment to be sold, leased, or rented.

23 (e) On request, the comptroller shall make information in
24 the registry available to a chief appraiser, tax assessor, or
25 designee of a chief appraiser or tax assessor.

26 (f) The comptroller by rule may prescribe a registration
27 application fee in an amount necessary to defray the expense of

1 developing and maintaining the registry.

2 (g) A person commits an offense if the person engages in the
3 sale, lease, or rental of more than five items of heavy equipment in
4 a year in this state and fails to apply for registration in
5 compliance with the comptroller's rules adopted under this section.
6 An offense under this subsection is a Class C misdemeanor.

7 SECTION 6. Effective January 1, 2012, the following
8 provisions of the Tax Code are repealed:

- 9 (1) Sections 23.1241(a)(3) and (8); and
10 (2) Sections 23.1241(i) and 23.1242(1).

11 SECTION 7. (a) This Act applies only to ad valorem taxes
12 imposed for a tax year beginning on or after the effective date of
13 this Act.

14 (b) A person is not required to register or apply for
15 registration under Section 23.1243, Tax Code, as added by this Act,
16 before January 1, 2012.

17 SECTION 8. Except as otherwise provided by this Act, this
18 Act takes effect September 1, 2011.