

1-1 By: Harless, et al. (Senate Sponsor - Eltife) H.B. No. 2476
1-2 (In the Senate - Received from the House April 28, 2011;
1-3 May 3, 2011, read first time and referred to Committee on Finance;
1-4 May 11, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 12, Nays 0; May 11, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2476 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the appraisal for ad valorem tax purposes of certain
1-11 dealer's heavy equipment inventory; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Sections 23.1241(a)(1), (2), (6), (7), (8), and
1-14 (9), Tax Code, are amended to read as follows:

1-15 (1) "Dealer" means a person engaged in the business in
1-16 this state of selling, leasing, or renting heavy equipment.

1-17 (2) "Dealer's heavy equipment inventory" means all
1-18 items of heavy equipment that a dealer holds for sale, lease, or
1-19 rent during a 12-month period ~~[at retail]. [The term includes items~~
1-20 ~~of heavy equipment that are leased or rented but subject to a~~
1-21 ~~purchase option by the lessee or renter.]~~

1-22 (6) "Heavy equipment" means self-propelled,
1-23 self-powered, or pull-type equipment, including farm equipment or a
1-24 diesel engine, that weighs at least 1,500 ~~[3,000]~~ pounds and is
1-25 intended to be used for agricultural, construction, industrial,
1-26 maritime, mining, or forestry uses. The term does not include a
1-27 motor vehicle that is required by:

1-28 (A) Chapter 501, Transportation Code, to be
1-29 titled; or

1-30 (B) Chapter 502, Transportation Code, to be
1-31 registered.

1-32 (7) "Sales price" means:

1-33 (A) the total amount of money paid or to be paid
1-34 to a dealer for the purchase of an item of heavy equipment; or

1-35 (B) for a lease or rental ~~[with an option to~~
1-36 ~~purchase], the total amount of the lease or rental payments [plus~~
1-37 ~~any final consideration, excluding interest].~~

1-38 (8) "Subsequent sale" means a dealer-financed sale of
1-39 an item of heavy equipment that, at the time of the sale, has been
1-40 the subject of a dealer-financed sale from the same dealer's heavy
1-41 equipment inventory in the same calendar year. The term does not
1-42 include a rental or lease with an unexercised purchase option or
1-43 without a purchase option.

1-44 (9) "Total annual sales" means the total of the:

1-45 (A) sales price for each sale from a dealer's
1-46 heavy equipment inventory in a 12-month period; and

1-47 (B) lease and rental payments received for each
1-48 lease or rental of heavy equipment inventory in a 12-month period.

1-49 SECTION 2. Section 23.1241, Tax Code, is amended by
1-50 amending Subsections (b), (e), and (j) and adding Subsection (b-1)
1-51 to read as follows:

1-52 (b) For the purpose of the computation of property tax, ~~[+~~
1-53 ~~[-1-]]~~ the market value of a dealer's heavy equipment

1-54 inventory on January 1 is the total annual sales, less sales to
1-55 dealers, fleet transactions, and subsequent sales, for the 12-month
1-56 period corresponding to the preceding tax year, divided by 12 ~~[, and~~

1-57 ~~[-2-] a sale is considered to occur when possession of~~
1-58 ~~an item of heavy equipment is transferred from the dealer to the~~
1-59 ~~purchaser].~~

1-60 (b-1) For the purpose of the computation of property tax on
1-61 the market value of the dealer's heavy equipment inventory, the
1-62 sales price of an item of heavy equipment that is sold during the
1-63 preceding tax year after being leased or rented for a portion of

2-1 that same tax year is considered to be the sum of the sales price of
 2-2 the item plus the total lease and rental payments received for the
 2-3 item in the preceding tax year.

2-4 (e) A dealer is presumed to be an owner of a dealer's heavy
 2-5 equipment inventory on January 1 if, in the 12-month period ending
 2-6 on December 31 of the preceding year, the dealer sold, leased, or
 2-7 rented an item of heavy equipment to a person other than a dealer.
 2-8 The presumption is not rebutted by the fact that a dealer has no
 2-9 item of heavy equipment physically on hand for sale from the
 2-10 dealer's heavy equipment inventory on January 1.

2-11 (j) In addition to other penalties provided by law, a dealer
 2-12 who fails to file or fails to timely file a declaration required by
 2-13 Subsection (f) shall forfeit a penalty. A tax lien attaches to the
 2-14 dealer's business personal property to secure payment of the
 2-15 penalty. The appropriate district attorney, criminal district
 2-16 attorney, or county attorney may ~~[shall]~~ collect the penalty
 2-17 established by this section in the name of the ~~[chief appraiser or]~~
 2-18 collector. The chief appraiser may collect the penalty in the name
 2-19 of the chief appraiser. The chief appraiser or the appropriate
 2-20 district attorney, criminal district attorney, or county attorney
 2-21 may sue to enforce compliance with this section. Venue of an action
 2-22 brought under this subsection, including an action for injunctive
 2-23 relief, is in the county in which the violation occurred or in the
 2-24 county in which the owner maintains the owner's principal place of
 2-25 business or residence. The court may award attorney's fees to a
 2-26 chief appraiser, district attorney, criminal district attorney, or
 2-27 county attorney who prevails in a suit to collect a penalty or
 2-28 enforce compliance with this section. A penalty forfeited under
 2-29 this subsection is \$1,000 for each month or part of a month in which
 2-30 a declaration is not filed or timely filed after it is due.

2-31 SECTION 3. Sections 23.1242(b), (d), (e), (f), and (m), Tax
 2-32 Code, are amended to read as follows:

2-33 (b) Except for an item of heavy equipment sold to a dealer,
 2-34 an item of heavy equipment included in a fleet transaction, ~~[or]~~ an
 2-35 item of heavy equipment that is the subject of a subsequent sale, or
 2-36 an item of heavy equipment that is subject to a lease or rental, an
 2-37 owner or a person who has agreed by contract to pay the owner's
 2-38 current year property taxes levied against the owner's heavy
 2-39 equipment inventory shall assign a unit property tax to each item of
 2-40 heavy equipment sold from a dealer's heavy equipment inventory. In
 2-41 the case of a lease or rental, the owner shall assign a unit
 2-42 property tax to each item of heavy equipment leased or rented. The
 2-43 unit property tax of each item of heavy equipment is determined by
 2-44 multiplying the sales price of the item or the monthly lease or
 2-45 rental payment received for the item, as applicable, by the unit
 2-46 property tax factor. If the transaction is a lease or rental, the
 2-47 owner shall collect the unit property tax from the lessee or renter
 2-48 at the time the lessee or renter submits payment for the lease or
 2-49 rental. The owner of the equipment shall state the amount of the
 2-50 unit property tax assigned as a separate line item on an invoice.
 2-51 On or before the 10th day of each month the owner shall, together
 2-52 with the statement filed by the owner as required by this section,
 2-53 deposit with the collector an amount equal to the total of unit
 2-54 property tax assigned to all items of heavy equipment sold, leased,
 2-55 or rented from the dealer's heavy equipment inventory in the
 2-56 preceding month to which a unit property tax was assigned. The
 2-57 money shall be deposited by the collector to the credit of the
 2-58 owner's escrow account for prepayment of property taxes as provided
 2-59 by this section. An escrow account required by this section is used
 2-60 to pay property taxes levied against the dealer's heavy equipment
 2-61 inventory, and the owner shall fund the escrow account as provided
 2-62 by this subsection.

2-63 (d) Except as provided by Section 23.1243, the ~~[The]~~ owner
 2-64 may not withdraw funds in an escrow account created under this
 2-65 section.

2-66 (e) The comptroller by rule shall adopt a dealer's heavy
 2-67 equipment inventory tax statement form. Each month, a dealer shall
 2-68 complete the form regardless of whether an item of heavy equipment
 2-69 is sold, leased, or rented. A dealer may use no other form for that

3-1 purpose. The statement may include the information the comptroller
 3-2 considers appropriate but shall include at least the following:

3-3 (1) a description of each item of heavy equipment
 3-4 sold, leased, or rented including any unique identification or
 3-5 serial number affixed to the item by the manufacturer;

3-6 (2) the sales price of or lease or rental payment
 3-7 received for the item of heavy equipment, as applicable;

3-8 (3) the unit property tax of the item of heavy
 3-9 equipment, if any; and

3-10 (4) the reason no unit property tax is assigned if no
 3-11 unit property tax is assigned.

3-12 (f) On or before the 10th day of each month, a dealer shall
 3-13 file with the collector the statement covering the sale, lease, or
 3-14 rental of each item of heavy equipment sold, leased, or rented by
 3-15 the dealer in the preceding month. On or before the 10th day of a
 3-16 month following a month in which a dealer does not sell, lease, or
 3-17 rent an item of heavy equipment, the dealer must file the statement
 3-18 with the collector and indicate that no sales, leases, or rentals
 3-19 were made in the prior month. A dealer shall file a copy of the
 3-20 statement with the chief appraiser and retain documentation
 3-21 relating to the disposition of each item of heavy equipment sold and
 3-22 the lease or rental of each item of heavy equipment. A chief
 3-23 appraiser or collector may examine documents held by a dealer as
 3-24 provided by this subsection in the same manner, and subject to the
 3-25 same conditions, as provided by Section 23.1241(g).

3-26 (m) In addition to other penalties provided by law, a dealer
 3-27 who fails to file or fails to timely file a statement as required by
 3-28 this section shall forfeit a penalty. A tax lien attaches to the
 3-29 dealer's [owner's] business personal property to secure payment of
 3-30 the penalty. The appropriate district attorney, criminal district
 3-31 attorney, or county attorney may [shall] collect the penalty
 3-32 established by this section in the name of the [chief appraiser or]
 3-33 collector. The chief appraiser may collect the penalty in the name
 3-34 of the chief appraiser. The chief appraiser or the appropriate
 3-35 district attorney, criminal district attorney, or county attorney
 3-36 may sue to enforce compliance with this section. Venue of an action
 3-37 brought under this subsection, including an action for injunctive
 3-38 relief, is in the county in which the violation occurred or in the
 3-39 county in which the owner maintains the owner's principal place of
 3-40 business or residence. The court may award attorney's fees to a
 3-41 chief appraiser, district attorney, criminal district attorney, or
 3-42 county attorney who prevails in a suit to collect a penalty or
 3-43 enforce compliance with this section. A penalty forfeited under
 3-44 this subsection is \$500 for each month or part of a month in which a
 3-45 statement is not filed or timely filed after it is due.

3-46 SECTION 4. Subchapter B, Chapter 23, Tax Code, is amended by
 3-47 adding Section 23.1243 to read as follows:

3-48 Sec. 23.1243. REFUND OF PREPAYMENT OF TAXES ON FLEET
 3-49 TRANSACTION. (a) In this section, "dealer" and "fleet
 3-50 transaction" have the meanings assigned those terms by Section
 3-51 23.1241.

3-52 (b) A dealer may apply to the chief appraiser for a refund of
 3-53 the unit property tax paid on a sale that is a fleet transaction.

3-54 (c) The chief appraiser shall determine whether to approve
 3-55 or deny, wholly or partly, the refund requested in the application.
 3-56 The chief appraiser shall deliver a written notice of the chief
 3-57 appraiser's determination to the collector maintaining the escrow
 3-58 account described by Section 23.1242 and to the applicant that
 3-59 states the amount, if any, to be refunded.

3-60 (d) A collector who receives a notice described by
 3-61 Subsection (c) stating an amount to be refunded shall pay the amount
 3-62 to the dealer not later than the 45th day after the date the
 3-63 collector receives the notice. The dealer shall use the dealer's
 3-64 best efforts to pay the refund to the customer who paid the tax that
 3-65 relates to the fleet transaction for which the refund is requested
 3-66 not later than the 30th day after the date the dealer receives the
 3-67 refund.

3-68 SECTION 5. Section 41.44(a), Tax Code, is amended to read as
 3-69 follows:

4-1 (a) Except as provided by Subsections (b), (b-1), (c),
4-2 (c-1), and (c-2), to be entitled to a hearing and determination of a
4-3 protest, the property owner initiating the protest must file a
4-4 written notice of the protest with the appraisal review board
4-5 having authority to hear the matter protested:

4-6 (1) before May 1 or not later than the 30th day after
4-7 the date that notice to the property owner was delivered to the
4-8 property owner as provided by Section 25.19, if the property is a
4-9 single-family residence that qualifies for an exemption under
4-10 Section 11.13, whichever is later;

4-11 (2) before June 1 or not later than the 30th day after
4-12 the date that notice was delivered to the property owner as provided
4-13 by Section 25.19 in connection with any other property, whichever
4-14 is later;

4-15 (3) in the case of a protest of a change in the
4-16 appraisal records ordered as provided by Subchapter A of this
4-17 chapter or by Chapter 25, not later than the 30th day after the date
4-18 notice of the change is delivered to the property owner; [~~or~~]

4-19 (4) in the case of a determination that a change in the
4-20 use of land appraised under Subchapter C, D, E, or H, Chapter 23,
4-21 has occurred, not later than the 30th day after the date the notice
4-22 of the determination is delivered to the property owner; or

4-23 (5) in the case of a determination of eligibility for a
4-24 refund under Section 23.1243, not later than the 30th day after the
4-25 date the notice of the determination is delivered to the property
4-26 owner.

4-27 SECTION 6. Section 41.47, Tax Code, is amended by adding
4-28 Subsection (c) to read as follows:

4-29 (c) If, in the case of a determination of eligibility for a
4-30 refund requested under Section 23.1243, the appraisal review board
4-31 determines that the dealer is entitled to a refund in excess of the
4-32 amount, if any, to which the chief appraiser determined the dealer
4-33 to be entitled, the board shall order the chief appraiser to deliver
4-34 written notice of the board's determination to the collector and
4-35 the dealer in the manner provided by Section 23.1243(c).

4-36 SECTION 7. Section 42.01, Tax Code, is amended to read as
4-37 follows:

4-38 Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. A property
4-39 owner is entitled to appeal:

4-40 (1) an order of the appraisal review board
4-41 determining:

4-42 (A) a protest by the property owner as provided
4-43 by Subchapter C of Chapter 41; [~~or~~]

4-44 (B) a determination of an appraisal review board
4-45 on a motion filed under Section 25.25; or

4-46 (C) a determination of an appraisal review board
4-47 of eligibility for a refund requested under Section 23.1243; or

4-48 (2) an order of the comptroller issued as provided by
4-49 Subchapter B, Chapter 24, apportioning among the counties the
4-50 appraised value of railroad rolling stock owned by the property
4-51 owner.

4-52 SECTION 8. Sections 23.1241(i) and 23.1242(1), Tax Code,
4-53 are repealed.

4-54 SECTION 9. This Act applies only to ad valorem taxes imposed
4-55 for a tax year beginning on or after the effective date of this Act.

4-56 SECTION 10. This Act takes effect January 1, 2012.

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