

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 2, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2476 by Harless (Relating to the appraisal for ad valorem tax purposes of certain dealer's heavy equipment inventory; providing penalties.), **As Introduced**

The changes proposed by the bill would return the property tax treatment of leased or rented heavy equipment to its favorable status prior to the court decision, *Briggs Equip. Trust v. Harris County Appraisal Dist.*, 294 S.W. 3d 667 (Tex. App. Houston 1st Dist., 2009). As a result, taxable property values would be reduced and the related costs to the Foundation School Fund would be increased through the operation of the school finance formulas.

The bill would amend the definitions in Section 23.1241 of the Tax Code such that "total annual sales" would mean the total of the sales price for each sale from a dealer's heavy equipment inventory in a 12-month period, and lease and rental payments received for each lease or rental of heavy equipment inventory in a 12 month period. Under current law, total annual sales includes only the heavy equipment inventory sales prices in a 12-month period. Conforming changes would be made to the other definitions.

For the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory, the sales price of an item of heavy equipment that is sold during the preceding tax year after being leased or rented for a portion of that same tax year would be considered to be the sum of the sales price of the item plus the total lease and rental payments received for the item in the preceding tax year. The value of subsequent sales would be disallowed as a deduction from the market value of the heavy equipment inventory.

The bill would allow, rather than require, the appropriate district attorney, criminal district attorney, or county attorney to collect the penalty for failure to file or timely file a required declaration. The chief appraiser would be allowed to collect the penalty on his or her own behalf and the chief appraiser or any of the attorneys named above would be permitted to sue to enforce compliance with the filing requirements. The venue for an action for injunctive relief would be in the county in which the violation occurred or in the county in which the owner maintains a principal place of business or residence. The court would be permitted to award attorney's fees to a chief appraiser or any of the attorney's named above who prevails in a suit to collect a penalty or enforce compliance with the filing requirements. The bill would make the same changes regarding who may collect a penalty, who may sue to enforce compliance, venue, and attorney's fees in relation to statements required to be filed regarding prepayment of taxes by heavy equipment dealers under Section 23.1242 of the Tax Code.

The bill would amend Section 23.1242 of the Tax Code to add heavy equipment leasing and renting to the calculation of the unit property tax. If a transaction is a lease or rental with an option to purchase, the owner would be required to collect the unit property tax from the lessee or renter at the time the lessee or renter submits payment for the lease or rental. The owner would be required to state the amount of the unit property tax assigned as a separate line item on an invoice.

The bill would add new Section 23.1243 of the Tax Code to require the Comptroller to develop and maintain a registry containing information on heavy equipment dealers and require heavy equipment dealers to register with the Comptroller not later than January 1, each year. The Comptroller would be required to adopt rules to implement the registry which would require certain information from each

registrant. The information would be made available to chief appraisers, tax assessors or their designees on request. The Comptroller would be allowed to charge a registration fee to defray expenses associated with the registry. A person who sold more than five items of heavy equipment in a year and failed to apply for registration in compliance with the Comptroller's rules would commit a Class C misdemeanor.

The bill would make other conforming changes to the Tax Code.

A recent court decision, *Briggs Equip. Trust v. Harris County Appraisal Dist.*, 294 S.W. 3d 667 (Tex. App. Houston 1st Dist., 2009), ended the common practice of treating heavy equipment leases or rentals as "sales" for the purpose of being included as heavy equipment inventory under Section 23.1241 and 23.1242 of the Tax Code. This previous special treatment resulted in reduced taxes compared to the standard appraisal of personal property under the Tax Code. The court decision ended the special treatment and resulted in a tax increase for the leased or rented heavy equipment. The changes proposed by the bill would return the property tax treatment of the leased or rented heavy equipment to its favorable status and cause a revenue loss to local taxing units and to the state. No information is available regarding the reduction in taxable value that would result from this change in treatment of heavy equipment inventory. Consequently, the fiscal impact cannot be estimated.

The Comptroller's office indicates that there would be a one-time technology cost of \$537,000 in fiscal 2012 for programming and project management. The Comptroller's office also indicates that there would also be an administrative cost of \$69,000 per year to hire 1 FTE to create a web-based system to register heavy equipment dealers and process application fees, program changes, maintenance, and security controls.

A person would not be required to register as required by the bill before January 1, 2012 and provisions relating to the registry would be effective September 1, 2011. Otherwise, the bill would take effect on January 1, 2012.

Local Government Impact

The changes proposed by the bill would return the property tax treatment of leased or rented heavy equipment to its favorable status prior to the court decision, *Briggs Equip. Trust v. Harris County Appraisal Dist.*, 294 S.W. 3d 667 (Tex. App. Houston 1st Dist., 2009), and would cause a revenue loss to local taxing units.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, KK, SD, SJS