

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 11, 2011

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

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.), **Committee Report 2nd House, Substituted**

The changes proposed by the bill would end the possibility of multiple rentals during a year being treated as multiple sales - thus reducing tax revenues and creating a cost to the State in those instances. The bill would also, however, require heavy equipment dealers to pay a unit property tax on every rental of heavy equipment during every year it is in use which would create an offsetting gain to the State.

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. In addition, the definition of "subsequent sale" would be amended to provide that the term does not include a rental or lease with an unexercised purchase option or without a purchase option. The bill also would reduce the weight threshold in the heavy equipment definition from "at least 3,000 pounds" to "at least 1,500 pounds".

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 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 attorneys 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 require the owner of heavy equipment to assign a unit property tax to each item of heavy equipment that is leased or rented. If a transaction is a lease or rental, 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 Subsection 23.1243 to the Tax Code permitting a dealer to apply to the chief appraiser for a refund of property taxes paid on a fleet transaction sale. "Fleet transaction" currently

means the sale of five or more items in which the dealer finances the purchase of the items, is the sole lender, and retains the exclusive right to enforce the terms of the agreement. The bill would provide procedures for the chief appraiser to determine whether to grant the refund application, the chief appraiser to deliver refund notices to the applicant and tax collector, the tax collector to make the refund payment not later than 45 days after receiving the notice, the dealer to pay the refund to the equipment purchaser, and would provide refund determination protest procedures.

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 practice of treating heavy equipment leases or rentals with options to purchase as subsequent sales under Section 23.1241 of the Tax Code. Because subsequent sales are deducted in the market value calculation, this treatment resulted in reduced taxes. The court decision required that each rental (including multiple rentals during the year) with a purchase option be treated as a normal sale, which added to market value and resulted in a tax increase for the leased or rented heavy equipment in some instances. The changes proposed by the bill would end the possibility of multiple rentals during a year being treated as multiple sales, thus reducing tax revenues and creating a cost in those instances. The bill would also, however, require heavy equipment dealers to pay a unit property tax on every rental of heavy equipment during every year it is in use which would create an offsetting gain to taxing units. No information is available regarding the exact amount of gains or losses under the bill. Consequently, the fiscal impact on units of local government and the state cannot be estimated.

The bill's provision that would reduce the weight threshold for appraisal treatment as heavy equipment from 3,000 pounds to 1,500 pounds would include more equipment under the special inventory appraisal provisions of the Tax Code. No information is available regarding whether overall taxable values for lighter-weight equipment would be higher or lower under the special appraisal provisions, so the fiscal impact cannot be estimated.

The bill would take effect on January 1, 2012.

Local Government Impact

The changes proposed by the bill would end the possibility of multiple rentals during a year being treated as multiple sales - thus reducing tax revenues. The bill would also, however, require heavy equipment dealers to pay a unit property tax on every rental of heavy equipment during every year it is in use which would create an offsetting gain to local taxing units.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, KK, SD, SJS