

SENATE AMENDMENTS

2nd Printing

By: Harless, Hilderbran, Villarreal, Ritter

H.B. No. 2476

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.

ADOPTED

MAY 19 2011

Atory Sew
Secretary of the Senate

By: Harless

H.B. No. 2476

Substitute the following for H.B. No. 2476

By: [Signature]

C.S. H.B. No. 2476

A BILL TO BE ENTITLED

AN ACT

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3 dealer's heavy equipment inventory; providing penalties.

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

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6 (9), 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 (6) "Heavy equipment" means self-propelled,
15 self-powered, or pull-type equipment, including farm equipment or a
16 diesel engine, that weighs at least 1,500 [~~3,000~~] pounds and is
17 intended to be used for agricultural, construction, industrial,
18 maritime, mining, or forestry uses. The term does not include a
19 motor vehicle that is required by:

20 (A) Chapter 501, Transportation Code, to be
21 titled; or

22 (B) Chapter 502, Transportation Code, to be
23 registered.

24 (7) "Sales price" means:

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

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

6 (8) "Subsequent sale" means a dealer-financed sale of
7 an item of heavy equipment that, at the time of the sale, has been
8 the subject of a dealer-financed sale from the same dealer's heavy
9 equipment inventory in the same calendar year. The term does not
10 include a rental or lease with an unexercised purchase option or
11 without a purchase option.

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

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

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16 lease or rental of heavy equipment inventory in a 12-month period.

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

20 (b) For the purpose of the computation of property tax, [+
21 [~~(1)~~] the market value of a dealer's heavy equipment
22 inventory on January 1 is the total annual sales, less sales to
23 dealers, fleet transactions, and subsequent sales, for the 12-month
24 period corresponding to the preceding tax year, divided by 12 [~~+~~ and
25 [~~(2)~~ a sale is considered to occur when possession of
26 an item of heavy equipment is transferred from the dealer to the
27 purchaser].

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

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

15 (j) In addition to other penalties provided by law, a dealer
16 who fails to file or fails to timely file a declaration required by
17 Subsection (f) shall forfeit a penalty. A tax lien attaches to the
18 dealer's business personal property to secure payment of the
19 penalty. The appropriate district attorney, criminal district
20 attorney, or county attorney may ~~shall~~ collect the penalty
21 established by this section in the name of the ~~chief appraiser or~~
22 collector. The chief appraiser may collect the penalty in the name
23 of the chief appraiser. The chief appraiser or the appropriate
24 district attorney, criminal district attorney, or county attorney
25 may sue to enforce compliance with this section. Venue of an action
26 brought under this subsection, including an action for injunctive
27 relief, is in the county in which the violation occurred or in the

1 county in which the owner maintains the owner's principal place of
2 business or residence. The court may award attorney's fees to a
3 chief appraiser, district attorney, criminal district attorney, or
4 county attorney who prevails in a suit to collect a penalty or
5 enforce compliance with this section. A penalty forfeited under
6 this subsection is \$1,000 for each month or part of a month in which
7 a declaration is not filed or timely filed after it is due.

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

10 (b) Except for an item of heavy equipment sold to a dealer,
11 an item of heavy equipment included in a fleet transaction, ~~[or]~~ an
12 item of heavy equipment that is the subject of a subsequent sale, or
13 an item of heavy equipment that is subject to a lease or rental, an
14 owner or a person who has agreed by contract to pay the owner's
15 current year property taxes levied against the owner's heavy
16 equipment inventory shall assign a unit property tax to each item of
17 heavy equipment sold from a dealer's heavy equipment inventory. In
18 the case of a lease or rental, the owner shall assign a unit
19 property tax to each item of heavy equipment leased or rented. The
20 unit property tax of each item of heavy equipment is determined by
21 multiplying the sales price of the item or the monthly lease or
22 rental payment received for the item, as applicable, by the unit
23 property tax factor. If the transaction is a lease or rental, the
24 owner shall collect the unit property tax from the lessee or renter
25 at the time the lessee or renter submits payment for the lease or
26 rental. The owner of the equipment shall state the amount of the
27 unit property tax assigned as a separate line item on an invoice.

1 On or before the 10th day of each month the owner shall, together
2 with the statement filed by the owner as required by this section,
3 deposit with the collector an amount equal to the total of unit
4 property tax assigned to all items of heavy equipment sold, leased,
5 or rented from the dealer's heavy equipment inventory in the
6 preceding month to which a unit property tax was assigned. The
7 money shall be deposited by the collector to the credit of the
8 owner's escrow account for prepayment of property taxes as provided
9 by this section. An escrow account required by this section is used
10 to pay property taxes levied against the dealer's heavy equipment
11 inventory, and the owner shall fund the escrow account as provided
12 by this subsection.

13 (d) Except as provided by Section 23.1243, the ~~[The]~~ owner
14 may not withdraw funds in an escrow account created under this
15 section.

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

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

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

27 (3) the unit property tax of the item of heavy

1 equipment, if any; and

2 (4) the reason no unit property tax is assigned if no
3 unit property tax is assigned.

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

18 (m) In addition to other penalties provided by law, a dealer
19 who fails to file or fails to timely file a statement as required by
20 this section shall forfeit a penalty. A tax lien attaches to the
21 dealer's ~~owner's~~ business personal property to secure payment of
22 the penalty. The appropriate district attorney, criminal district
23 attorney, or county attorney may ~~shall~~ collect the penalty
24 established by this section in the name of the ~~chief appraiser or~~
25 collector. The chief appraiser may collect the penalty in the name
26 of the chief appraiser. The chief appraiser or the appropriate
27 district attorney, criminal district attorney, or county attorney

1 may sue to enforce compliance with this section. Venue of an action
2 brought under this subsection, including an action for injunctive
3 relief, is in the county in which the violation occurred or in the
4 county in which the owner maintains the owner's principal place of
5 business or residence. The court may award attorney's fees to a
6 chief appraiser, district attorney, criminal district attorney, or
7 county attorney who prevails in a suit to collect a penalty or
8 enforce compliance with this section. A penalty forfeited under
9 this subsection is \$500 for each month or part of a month in which a
10 statement is not filed or timely filed after it is due.

11 SECTION 4. Subchapter B, Chapter 23, Tax Code, is amended by
12 adding Section 23.1243 to read as follows:

13 Sec. 23.1243. REFUND OF PREPAYMENT OF TAXES ON FLEET
14 TRANSACTION. (a) In this section, "dealer" and "fleet
15 transaction" have the meanings assigned those terms by Section
16 23.1241.

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

19 (c) The chief appraiser shall determine whether to approve
20 or deny, wholly or partly, the refund requested in the application.
21 The chief appraiser shall deliver a written notice of the chief
22 appraiser's determination to the collector maintaining the escrow
23 account described by Section 23.1242 and to the applicant that
24 states the amount, if any, to be refunded.

25 (d) A collector who receives a notice described by
26 Subsection (c) stating an amount to be refunded shall pay the amount
27 to the dealer not later than the 45th day after the date the

1 collector receives the notice. The dealer shall use the dealer's
2 best efforts to pay the refund to the customer who paid the tax that
3 relates to the fleet transaction for which the refund is requested
4 not later than the 30th day after the date the dealer receives the
5 refund.

6 SECTION 5. Section 41.44(a), Tax Code, is amended to read as
7 follows:

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

13 (1) before May 1 or not later than the 30th day after
14 the date that notice to the property owner was delivered to the
15 property owner as provided by Section 25.19, if the property is a
16 single-family residence that qualifies for an exemption under
17 Section 11.13, whichever is later;

18 (2) before June 1 or not later than the 30th day after
19 the date that notice was delivered to the property owner as provided
20 by Section 25.19 in connection with any other property, whichever
21 is later;

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

26 (4) in the case of a determination that a change in the
27 use of land appraised under Subchapter C, D, E, or H, Chapter 23,

1 has occurred, not later than the 30th day after the date the notice
2 of the determination is delivered to the property owner; or
3 (5) in the case of a determination of eligibility for a
4 refund under Section 23.1243, not later than the 30th day after the
5 date the notice of the determination is delivered to the property
6 owner.

7 SECTION 6. Section 41.47, Tax Code, is amended by adding
8 Subsection (c) to read as follows:

9 (c) If, in the case of a determination of eligibility for a
10 refund requested under Section 23.1243, the appraisal review board
11 determines that the dealer is entitled to a refund in excess of the
12 amount, if any, to which the chief appraiser determined the dealer
13 to be entitled, the board shall order the chief appraiser to deliver
14 written notice of the board's determination to the collector and
15 the dealer in the manner provided by Section 23.1243(c).

16 SECTION 7. Section 42.01, Tax Code, is amended to read as
17 follows:

18 Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. A property
19 owner is entitled to appeal:

20 (1) an order of the appraisal review board
21 determining:

22 (A) a protest by the property owner as provided
23 by Subchapter C of Chapter 41; [~~or~~]

24 (B) a determination of an appraisal review board
25 on a motion filed under Section 25.25; or

26 (C) a determination of an appraisal review board
27 of eligibility for a refund requested under Section 23.1243; or

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

5 SECTION 8. Sections 23.1241(i) and 23.1242(1), Tax Code,
6 are repealed.

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

9 SECTION 10. This Act takes effect January 1, 2012.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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 Passed 2nd House**

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

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 5, 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.), **As Engrossed**

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.

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 require a collector to provide a credit or refund to an owner if the owner determines that the owner accidentally paid taxes on a sale that is a fleet transaction under Section 23.1241. "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 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 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

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 13, 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.), **Committee Report 1st House, Substituted**

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 include 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.

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 require a collector to provide a credit or refund to an owner if the owner determines that the owner accidentally paid taxes on a sale that is a fleet transaction under Section 23.1241. "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 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 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

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

82ND LEGISLATIVE REGULAR SESSION

April 12, 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.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: JOB, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY 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**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: JOB, KK