

BILL ANALYSIS

C.S.H.B. 1724
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is currently a statute of limitations on the state's authority to assess state taxes and to bring suit to collect delinquent state taxes, including state hotel occupancy taxes, and interest imposed on delinquent state hotel occupancy taxes. However, state law does not impose any such limitation period or interest on municipal or county hotel occupancy taxes. Some local jurisdictions use designated third party companies to conduct audits of the jurisdiction's hotel occupancy taxes. Those companies sometimes expand the scope of an audit to include four or more years' worth of tax records.

There are concerns that hotel operators have no way to predict how long to maintain records because there is no statute of limitations on the assessment of such taxes, and these concerns have caused some hotel operators to contend that the interest rate on delinquent local hotel occupancy taxes should be comparable to the rate applicable to state-imposed taxes. C.S.H.B. 1724 seeks to align local hotel occupancy tax collection more closely with state hotel occupancy tax collection.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1724 amends the Tax Code to make a person who fails to pay a municipal hotel occupancy tax when due liable to the municipality that imposes the tax for interest on the unpaid amount at the greater of the rate set for interest charges on delinquent state-imposed taxes or the rate imposed by the municipality on January 1, 2013, and establishes that the interest accrues from the first day after the date due until the tax is paid. The bill removes statutory provisions specifying that a municipality's right to bring suit against a person who is required to collect a municipal hotel occupancy tax and to pay the collections over to the municipality and who has failed to file a tax report or pay the taxes when due is not barred by certain limitations on suits brought by governmental entities and exempting such a suit and tax from the limitation period for assessing state-imposed taxes and bringing a suit to collect those taxes. The bill instead requires a municipality to bring such a suit not later than the fourth anniversary of the date the tax becomes due. The bill exempts a municipality from this deadline and authorizes the municipality to bring such a suit at any time if, with intent to evade the tax, the person files a false or fraudulent report with the municipality or if the person has not filed a report for the tax with the municipality.

C.S.H.B. 1724 requires a county to bring suit against an owner or operator of a hotel required to report and send county hotel occupancy taxes to the county if the owner or operator fails to report when required or pay the tax when due not later than the fourth anniversary of the date the tax becomes due. The bill exempts a county from this deadline and authorizes a county to bring such a suit at any time if, with intent to evade the tax, the person files a false or fraudulent report

with the county or if the person has not filed a report for the tax with the county.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1724 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 351.004(a) and (b), Tax Code, are amended to read as follows:

(a) The municipality may bring suit against a person who is required to collect the tax imposed by this chapter and pay the collections over to the municipality, and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed, as applicable, as provided by the court's order. In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for:

(1) the municipality's reasonable attorney's fees;

(2) the costs of an audit conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:

(A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and

(B) the municipality has not received a disbursement from the comptroller as provided by Section 156.2513 related to the person's concurrent state tax delinquency described by Section 351.008; ~~and~~

(3) a penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; ~~and~~

(4) interest under Section 351.0042.

(b) A municipality must bring suit under this section not later than the fourth anniversary of the date the tax becomes due. ~~[Section 16.061, Civil Practice and Remedies Code,~~

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 351.004, Tax Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) The municipality may bring suit against a person who is required to collect the tax imposed by this chapter and pay the collections over to the municipality, and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the person from operating a hotel in the municipality until the tax is paid or the report filed, as applicable, as provided by the court's order. In addition to the amount of any tax owed under this chapter, the person is liable to the municipality for:

(1) the municipality's reasonable attorney's fees;

(2) the costs of an audit conducted under Subsection (a-1)(1), as determined by the municipality using a reasonable rate, but only if:

(A) the tax has been delinquent for at least two complete municipal fiscal quarters at the time the audit is conducted; and

(B) the municipality has not received a disbursement from the comptroller as provided by Section 156.2513 related to the person's concurrent state tax delinquency described by Section 351.008; ~~and~~

(3) a penalty equal to 15 percent of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter; ~~and~~

(4) interest under Section 351.0042.

(b) Except as provided by Subsection (b-1), a municipality must bring suit under this section not later than the fourth anniversary of the date the tax becomes due. ~~[Section~~

~~applies to the collection of a tax under this chapter. A limitation period provided by Title 2 relating to the time allowed to assess taxes and bring a suit to collect taxes does not apply to a tax imposed under this chapter or to a suit brought under this section.]~~

~~16.061, Civil Practice and Remedies Code, applies to the collection of a tax under this chapter. A limitation period provided by Title 2 relating to the time allowed to assess taxes and bring a suit to collect taxes does not apply to a tax imposed under this chapter or to a suit brought under this section.]~~

SECTION 2. Subchapter A, Chapter 351, Tax Code, is amended by adding Section 351.0042 to read as follows:

Sec. 351.0042. INTEREST ON DELINQUENT TAX. (a) A person who fails to pay a tax due under this chapter is liable to the municipality for interest at the rate provided by Section 111.060(b) on the unpaid amount.

(b) Interest under this section accrues from the first day after the date due until the tax is paid.

SECTION 3. Section 352.004, Tax Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) A county must bring suit under this section not later than the fourth anniversary of the date the tax becomes due.

SECTION 4. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had

SECTION 2. Subchapter A, Chapter 351, Tax Code, is amended by adding Section 351.0042 to read as follows:

Sec. 351.0042. INTEREST ON DELINQUENT TAX. (a) A person who fails to pay a tax due under this chapter is liable to the municipality for interest on the unpaid amount at the greater of the rate provided by Section 111.060(b) or the rate imposed by the municipality on January 1, 2013.

(b) Interest under this section accrues from the first day after the date due until the tax is paid.

SECTION 3. Section 352.004, Tax Code, is amended by adding Subsections (d-1) and (d-2) to read as follows:

(d-1) Except as provided by Subsection (d-2), a county must bring suit under this section not later than the fourth anniversary of the date the tax becomes due.

(d-2) The limitation provided by Subsection (d-1) does not apply and a county may bring suit under this section at any time if:
(1) with intent to evade the tax, the person files a false or fraudulent report with the county; or
(2) the person has not filed a report for the tax with the county.

SECTION 4. Same as introduced version.

not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.