

## **BILL ANALYSIS**

H.B. 3785

By: Perry

Federalism & Fiscal Responsibility, Select  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note that the federal Patient Protection and Affordable Care Act may penalize citizens for failure to pay penalties associated with not complying with the act. However, such parties contend that the Texas secretary of state serves as the official responsible for determining whether or not a federal tax lien or levy can be carried out and administers the process through which taxpayers may claim non-liability. H.B. 3785 seeks to provide taxpayers with options in the case of certain unlawful federal taxes and establishes a related offense.

### **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**

H.B. 3785 amends the Property Code to authorize a taxpayer to register a claim of non-liability for unlawful federal taxes, which the bill defines as any federal tax enacted by or the percentage an existing tax is increased by an unconstitutional act of the U.S. Congress that has been nullified by the state legislature, by filing a form prescribed by the bill with the secretary of state. The bill requires the secretary of state to provide such a form, which must be verified and must include the name, address, and social security number or taxpayer identification number of the claimant and a complete list of all unlawful federal taxes for which the claimant seeks to claim non-liability. The bill requires the form to be amended as needed to list taxes affected by the legislature's nullification of a federal act that enacts a new tax or increases an existing tax. The bill authorizes a taxpayer to register a claim of non-liability not later than the 30th day after the date the federal tax form is filed in compliance with federal regulations. The bill authorizes claims of non-liability to be registered for each tax year for which protection is sought and, in the case of federal taxes filed quarterly, except for estimated tax payments, authorizes claims to be registered for each quarter for which protection is sought. The bill makes the filing fee for registering such a claim \$30. The bill establishes that a document filed under the bill's provisions is not a public record under state public information law and restricts the availability of the document to the claimant or federal tax authorities on request.

H.B. 3785 requires the secretary of state to provide a form for granting permission to federal authorities to file a notice of federal tax lien or to execute a levy against a taxpayer who has registered a claim of non-liability for unlawful federal taxes and requires the form to be verified and to include the name, address, and social security number or taxpayer identification number of the taxpayer, the name of the federal tax authority requesting the form, verification that the federal tax authority has proven the taxpayer is liable for lawful federal taxes, the dollar amount for which the federal tax authority may impose a lien or levy against the taxpayer, and the seal of the State of Texas. The bill requires the form to be completed by the secretary of state and to be issued to federal tax authorities only on meeting the applicable requirements under the bill's provisions regarding preliminary procedures for filing or executing a notice of federal tax lien. The bill requires the secretary of state to provide a form attesting that federal tax authorities have

verified with the office of the secretary of state that a taxpayer has not registered a claim of non-liability for unlawful federal taxes and requires the form to be verified and to include the name, address, and social security number or taxpayer identification number of the claimant, the name of the federal tax authority performing the due diligence, and the seal of the State of Texas. The bill requires the form to be completed by the secretary of state and to be issued to federal tax authorities only on meeting the applicable requirements under the bill's provisions regarding preliminary procedures for filing or executing a notice of federal tax lien.

H.B. 3785 requires federal tax authorities to determine through the secretary of state's office whether a taxpayer has registered a claim of non-liability for unlawful federal taxes before filing a notice of federal tax lien and establishes that a filing is invalid and prohibits a filing officer from accepting the filing without the documentation prescribed by the bill. The bill requires the federal tax authorities, if the taxpayer has not registered a claim of non-liability, to obtain a form attesting that federal tax authorities have verified that a taxpayer has not registered a claim of non-liability for unlawful federal taxes and to present that documentation to the filing officer at the appropriate filing location and, if the taxpayer has registered a claim of non-liability, requires the federal tax authorities to provide to the secretary of state an itemized list of the taxpayer's tax liability citing each tax owed and the amount owed per tax listed. The bill prohibits federal tax authorities from being permitted to file a notice of federal tax lien against the taxpayer's property or property in which third parties have an interest if that list does not show the taxpayer is liable for lawful federal taxes. The bill requires the secretary of state, if the list shows the taxpayer is liable for lawful federal taxes, to issue a form to the federal tax authorities granting permission to file a notice of federal tax lien and requires the federal tax authorities, if that documentation is presented to the filing officer at the appropriate filing location, to be permitted to file a notice of federal tax lien against the taxpayer's property, or property in which third parties have an interest, up to the amount attributable to those lawful taxes.

H.B. 3785, in provisions that apply only to the execution of federal tax levies in harmony with claims of non-liability for unlawful federal taxes, requires federal tax authorities to first determine through the secretary of state's office whether the taxpayer has registered a claim of non-liability for unlawful federal taxes and to obtain the documentation prescribed by the bill. The bill requires the federal tax authorities to obtain a form attesting that federal tax authorities have verified that a taxpayer has not registered a claim of non-liability for unlawful federal taxes if the taxpayer has not registered a claim of non-liability and, if the taxpayer has registered a non-liability claim, requires the federal tax authorities to provide to the secretary of state an itemized list of the taxpayer's tax liability, citing each tax owed and the amount owed per tax listed. The bill prohibits the federal tax authorities from being permitted to execute a federal tax levy against the taxpayer's property or property in which third parties have an interest if the list does not show the taxpayer is liable for lawful federal taxes. The bill requires the secretary of state, if the list shows the taxpayer is liable for lawful federal taxes, to issue a form to the federal tax authorities granting permission to execute a levy against the taxpayer and requires the federal tax authorities to be permitted to levy against the taxpayer's property, or property in which third parties have an interest, up to the amount attributable to those lawful taxes. The bill prohibits federal tax authorities from levying third parties and prohibits a third party from complying with a levy by federal tax authorities unless the preceding conditions are met.

H.B. 3785 makes it a Class B misdemeanor offense, punishable by confinement for a term not to exceed 180 days, a fine of not more than \$5,000, or both the confinement and the fine, for a person who is a federal tax authority to execute or attempt to execute a federal tax levy, including a levy of a third party, without following the procedures prescribed by the bill's provisions, or for a third party to comply with a federal tax levy in violation of the bill's provisions.

H.B. 3785 clarifies that its provisions may not be construed to affect the collection of lawful federal taxes.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.