

BILL ANALYSIS

C.S.H.B. 2400
By: Bohac
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain automobile companies, interested parties note, are broken into separate divisions wholly owned by the same company to handle the company's major functions, such as manufacturing and sales. According to the parties, there is concern that a transfer between these wholly owned divisions could result in the imposition of sales tax. C.S.H.B. 2400 seeks to address this concern.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 2400 amends the Tax Code to exclude from the definition of "retail sale" for purposes relating to taxes on the sale, rental, and use of motor vehicles the sale of a new motor vehicle in which the purchaser is a manufacturer or distributor who acquires the motor vehicle either for the exclusive purpose of sale in the manner provided by law or for purposes allowed under Transportation Code provisions relating to dealer's and manufacturer's vehicle license plates. The bill extends the imposition of a use tax on each person issued a metal dealer's plate to each person issued an authorized manufacturer's plate and specifies that the Texas Department of Motor Vehicles is prohibited from issuing the manufacturer's plates until the tax is paid.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2400 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 152.001, Tax Code, is amended to read as follows:
Sec. 152.001. DEFINITIONS. In this

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 152.001(2), Tax Code, is amended to read as follows:

84R 21659

15.98.46

Substitute Document Number: 84R 13997

chapter:

(1) "Sale" includes:

- (A) an installment and credit sale;
- (B) an exchange of property for property or money;
- (C) an exchange in which property is transferred but the seller retains title as security for payment of the purchase price;
- (D) a transaction in which a motor vehicle is transferred to another person without payment of consideration and that does not qualify as a gift under Section 152.025; and
- (E) any other closed transaction that constitutes a sale.

(2) "Retail sale" means a sale of a motor vehicle except:

(A) the sale of a new motor vehicle in which the purchaser is a franchised dealer who is authorized by law and by franchise agreement to offer the vehicle for sale as a new motor vehicle and who acquires the vehicle either for the exclusive purpose of sale in the manner provided by law or for purposes allowed under Chapter 503, Transportation Code;

(B) the sale of a new motor vehicle in which the purchaser is a person who manufactures, distributes or assembles new motor vehicles and who acquires the vehicle for purposes allowed under Section 503.064, Transportation Code;

~~(C)(B)~~ the sale of a vehicle other than a new motor vehicle in which the purchaser is a dealer who holds a dealer's general distinguishing number issued under Chapter 503, Transportation Code, and who acquires the vehicle either for the exclusive purpose of resale in the manner provided by law or for purposes allowed under Chapter 503, Transportation Code; or

~~(D)(C)~~ the sale to a franchised dealer of a new motor vehicle removed from the franchised dealer's inventory for the purpose of entering into a contract to lease the vehicle to another person if, immediately after executing the lease contract, the franchised dealer transfers title of the vehicle and assigns the lease contract to the lessor of the vehicle.

(See Paragraph (B) above.)

(2) "Retail sale" means a sale of a motor vehicle except:

(A) the sale of a new motor vehicle in which the purchaser is a franchised dealer who is authorized by law and by franchise agreement to offer the vehicle for sale as a new motor vehicle and who acquires the vehicle either for the exclusive purpose of sale in the manner provided by law or for purposes allowed under Chapter 503, Transportation Code;

(See Paragraph (D) below.)

(B) the sale of a vehicle other than a new motor vehicle in which the purchaser is a dealer who holds a dealer's general distinguishing number issued under Chapter 503, Transportation Code, and who acquires the vehicle either for the exclusive purpose of resale in the manner provided by law or for purposes allowed under Chapter 503, Transportation Code; ~~[or]~~

(C) the sale to a franchised dealer of a new motor vehicle removed from the franchised dealer's inventory for the purpose of entering into a contract to lease the vehicle to another person if, immediately after executing the lease contract, the franchised dealer transfers title of the vehicle and assigns the lease contract to the lessor of the vehicle; or

(D) the sale of a new motor vehicle in which the purchaser is a manufacturer or distributor as those terms are defined by Section 2301.002, Occupations Code, who acquires the motor vehicle either for the exclusive purpose of sale in the manner

- (3) "Motor Vehicle" includes:
- (A) a self-propelled vehicle designed to transport persons or property on a public highway;
 - (B) a trailer and semitrailer, including a van, flatbed, tank, dumpster, dolly, jeep, stinger, auxiliary axle, or converter gear; and
 - (C) a house trailer as defined by Chapter 501, Transportation Code.
- (4) "Motor Vehicle" does not include:
- (A) a device moved only by human power;
 - (B) a device used exclusively on stationary rails or tracks;
 - (C) road-building machinery;
 - (D) a mobile office;
 - (E) a vehicle with respect to which the certificate of title has been surrendered in exchange for:
 - (i) a salvage vehicle title issued pursuant to Chapter 501, Transportation Code;
 - (ii) a certificate of authority issued pursuant to Chapter 683, Transportation Code;
 - (iii) a nonrepairable vehicle title issued pursuant to Chapter 501, Transportation Code;
 - (iv) an ownership document issued by another state if the document is comparable to a document issued pursuant to Subparagraph (i), (ii), or (iii);
 - (F) a vehicle that has been declared a total loss by an insurance company pursuant to the settlement or adjustment of a claim; or
 - (G) an oilfield portable unit.
- (5) "Rental" means:
- (A) an agreement by the owner of a motor vehicle to give for not longer than 180 days the exclusive use of that vehicle to another for consideration;
 - (B) an agreement by the original manufacturer of a motor vehicle to give exclusive use of the motor vehicle to another for consideration; or
 - (C) an agreement to give exclusive use of a motor vehicle to another for re-rental purposes.
- (6) "Lease" means an agreement, other than a rental, by an owner of a motor vehicle to give for longer than 180 days exclusive use of the vehicle to another for consideration.
- (7) "Public agency" means:
- (A) a department, commission, board, office, institution, or other agency of this state or of a county, city, town, school

district, hospital district, water district, or other special district or authority or political subdivision created by or under the constitution or the statutes of this state; or

(B) an unincorporated agency or instrumentality of the United States.

(8) "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

(A) separately stated charges for insurance;

(B) charges for damages to the motor vehicle occurring during the rental agreement period;

(C) separately stated charges for motor fuel sold by the owner of the motor vehicle; or

(D) discounts.

(9) "Owner of a motor vehicle" means:

(A) a person named in the certificate of title as the owner of the vehicle; or

(B) a person who has the exclusive use of a motor vehicle by reason of a rental and holds the vehicle for re-rental.

(10) "Orthopedically handicapped person" means a person who because of a physical impairment is unable to operate or reasonably be transported in a motor vehicle that has not been specially modified.

(11) "Volunteer fire department" means a company, department, or association whose members receive no or nominal compensation and which is organized for the purpose of answering fire alarms and extinguishing fires or answering fire alarms, extinguishing fires, and providing emergency medical services.

(12) "Motor vehicle used for religious purposes" means a motor vehicle that is:

(A) designed to carry more than six passengers;

(B) sold to, rented to, or used by a church or religious society;

(C) used primarily for the purpose of providing transportation to and from a church or religious service or meeting; and

(D) not registered as a passenger vehicle and not used primarily for the personal or official needs or duties of a minister.

(13) "Farm machine" means a self-propelled motor vehicle specially adapted for use in the production of crops or rearing of livestock, including poultry, and use in feedlots and includes a self-propelled motor vehicle specially adapted for applying plant food materials, agricultural chemicals, or

feed for livestock. "Farm machine" does not include any self-propelled motor vehicle specifically designed or specially adapted for the sole purpose of transporting agricultural products, plant food materials, agricultural chemicals, or feed for livestock.

(14) "Nonprofit" means:

(A) organized as a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) organized and operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation other than reasonable compensation for services rendered by persons who are not members of the organization, or realization of any other form of private gain.

(15) "Seller-financed sale" means a retail sale of a motor vehicle by a dealer licensed under Chapter 503, Transportation Code, in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received. The term does not include a:

(A) retail sale of a motor vehicle in which a person other than the seller provides the consideration for the sale and retains a lien on the motor vehicle as collateral;

(B) lease; or

(C) rental.

(16) "Mobile office" means a trailer designed to be used as an office, sales outlet, or other workplace.

(17) "Lessor" means a person who acquires title to a new motor vehicle for the purpose of leasing the vehicle to another person.

(18) "New motor vehicle" means a motor vehicle that, without regard to mileage, has not been the subject of a retail tax.

(19) "Franchised dealer" has the meaning assigned the term by Chapter 503, Transportation Code.

(20) "Oilfield portable unit" means a bunkhouse, manufactured home, trailer, or semitrailer that:

(A) is not a travel trailer, as defined by Section 502.166(e), Transportation Code;

(B) is designed to be used for temporary lodging or as temporary office space;

(C) is used exclusively at any oil, gas, water disposal, or injection well site to provide to well site employees, contractors, or other

workers sleeping accommodations or temporary work space, including office space; and
(D) does not require attachment to a foundation or to real property to be functional.

No equivalent provision.

SECTION 2. Section 152.027, Tax Code, is amended to read as follows:
Sec. 152.027. TAX ON METAL DEALER PLATES. (a) A use tax is imposed on each person to whom is issued a metal dealer's plate authorized by Chapter 503, Transportation Code or to whom is used a metal manufacturer's plate authorized by Chapter 503, Transportation Code.
(b) The tax is \$25 for each plate issued.
(c) The tax imposed by this section is in lieu of any other tax imposed by this chapter.

No equivalent provision.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 2. The heading to Section 152.027, Tax Code, is amended to read as follows:
Sec. 152.027. TAX ON METAL DEALER AND MANUFACTURER PLATES.

SECTION 3. Section 152.027(a), Tax Code, is amended to read as follows:

(a) A use tax is imposed on:
(1) each person [to whom is] issued a metal dealer's plate authorized by Chapter 503, Transportation Code; and
(2) each person issued a manufacturer's plate authorized by Chapter 503, Transportation Code.

SECTION 4. Section 152.042, Tax Code, is amended to read as follows:
Sec. 152.042. COLLECTION OF TAX ON METAL DEALER AND MANUFACTURER PLATES. A person required to pay the tax imposed by Section 152.027 shall pay the tax to the Texas Department of Motor Vehicles, and the department may not issue the metal dealer's or manufacturer's plates until the tax is paid.

SECTION 5. 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 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 6. Same as introduced version.