

By: Bohac

H.B. No. 2294

A BILL TO BE ENTITLED

AN ACT

relating to the audit, assessment, and collection of sales and use tax on general aviation aircraft under the Texas Tax Code.

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

SECTION 1. Chapter 101, Tax Code, is amended by adding subsection 101.003(14) to read as follows:

(14) "General Aviation Aircraft" means any aircraft other than those operated by scheduled commercial airlines under Part 121 of the Federal Aviation Regulations or aircraft owned by a governmental entity.

SECTION 2. Subchapter A, Chapter 111, Section 111.002, Tax Code, is amended by adding subsection (a-1) to read as follows:

(a-1) Deadlines for correspondence, production of documents or other action demanded of a taxpayer during an audit that would have the effect of waiving the taxpayer's right to protest an audit determination if the taxpayer fails to meet the deadline shall be promulgated by rule pursuant to Chapter 2001, Government Code. A deadline promulgated by rule as provided by this subsection shall use the date that the taxpayer receives the demand from the comptroller as the beginning date in computing the deadline period.

SECTION 3. Section 151.328, Subchapter H, Chapter 151, Tax Code is amended by adding subsections (i), (j), (k), (l), (m), (n), and (o) to read as follows:

(i) Sales and use tax exemption certificates promulgated by

1 the comptroller shall be accepted by the comptroller as prima facie
2 evidence that the described transaction qualifies for the
3 corresponding sales or use tax exemption as provided by the Tax
4 Code, unless the information provided on the certificate by the
5 taxpayer demonstrates that the transaction does not qualify for the
6 corresponding sales or use tax exemption. The comptroller shall
7 not request documents or other information beyond that which is
8 necessary to determine whether the information provided on the
9 certificate is factually incorrect in a manner that disqualifies
10 the transaction from the requested exemption.

11 (j) The comptroller shall complete any audit related to a
12 request for exemption from sales or use tax related to general
13 aviation aircraft no later than 180 days from the date of the
14 purchase, sale or lease of an aircraft which is the subject of the
15 audit.

16 (k) The comptroller shall not treat as precedential or
17 otherwise base audit determinations on unpublished
18 interpretations, State Office of Administrative Hearings opinions,
19 or comptroller opinions including, but not limited to, those
20 published in the State Automated Tax Research system.

21 (l) Under this section the term "lease" means a written
22 contract between a lessor and lessee transferring operational
23 control, as that term is defined in the Federal Aviation
24 Regulations, of an aircraft from lessor to lessee in exchange for
25 consideration paid by the lessee to the lessor which both lessor and
26 lessee agrees to, and which otherwise meets the requirements for an
27 aircraft lease described in the portion of the Federal Aviation

1 Regulations applicable to the operation of the aircraft in
2 question. "Operational control" with respect to a flight, means
3 the exercise of authority over initiating, conducting or
4 terminating a flight.

5 (m) Notwithstanding any other provision of the Tax Code, a
6 person who contests a sales or use tax audit determination related
7 to a general aviation aircraft transaction may exhaust all
8 administrative and judicial remedies before paying the contested
9 tax.

10 (n) Penalties and interest shall be tolled during the
11 administrative and judicial appeal of comptroller sales or use tax
12 audit determinations.

13 (o) A person who prevails in a contest regarding a
14 comptroller sales or use tax audit determination related to general
15 aviation aircraft is entitled to reasonable and necessary attorney
16 fees upon a finding by the State Office of Administrative Hearings
17 or a district court that the comptroller's audit determination was
18 arbitrary and capricious.

19 SECTION 4. This Act takes effect September 1, 2015.