86R29608 CJC-F

By:  Burrows, Murphy, Springer H.B. No. 2872

Substitute the following for H.B. No. 2872:

By:  Murphy C.S.H.B. No. 2872

A BILL TO BE ENTITLED

AN ACT

relating to the collection, remittance, and administration of certain taxes on motor vehicles rented through a marketplace rental provider.

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

SECTION 1.  Section 334.105, Local Government Code, is amended by adding Subsection (c) to read as follows:

(c)  Notwithstanding Subsections (a) and (b), if a motor vehicle subject to the tax imposed under this subchapter is rented through a marketplace rental provider, the marketplace rental provider shall collect the tax for the benefit of the municipality or county. The marketplace rental provider shall add the tax imposed under this subchapter, if applicable, and the gross rental receipts tax imposed by Chapter 152, Tax Code, to the rental charge, and the sum of the taxes is part of the rental charge, is a debt owed to the marketplace rental provider by the person renting the vehicle, and is recoverable at law in the same manner as the rental charge.

SECTION 2.  Section 334.109, Local Government Code, is amended to read as follows:

Sec. 334.109.  GROSS RECEIPTS PRESUMED SUBJECT TO TAX. All gross receipts of an owner of a motor vehicle or, if the motor vehicle is rented through a marketplace rental provider, of the provider, from the rental of the motor vehicle are presumed to be subject to the tax imposed by this subchapter, except for gross receipts for which the owner or marketplace rental provider has accepted in good faith a properly completed exemption certificate.

SECTION 3.  Section 334.110(a), Local Government Code, is amended to read as follows:

(a)  The owner of a motor vehicle used for rental purposes who is required to file a report under this subchapter or, if the motor vehicle is rented through a marketplace rental provider and the provider is required to file a report under this subchapter, the provider, shall keep for four years records and supporting documents containing the following information on the amount of:

(1)  gross rental receipts received from the rental of the motor vehicle; and

(2)  the tax imposed under this subchapter and paid to the municipality or county by the owner or the marketplace rental provider, as applicable, on each motor vehicle used for rental purposes by the owner.

SECTION 4.  Section 334.111(a), Local Government Code, is amended to read as follows:

(a)  An owner of a motor vehicle required to file a report under this subchapter or, if applicable, a marketplace rental provider required to file a report under this subchapter commits an offense if the owner or provider fails to make and retain complete records for the four-year period required by Section 334.110.

SECTION 5.  Section 334.113, Local Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a)  Except as otherwise provided by this section or another provision of this subchapter, the [~~The~~] owner of a motor vehicle required to collect the tax imposed under this subchapter shall report and pay [~~send~~] the taxes collected to the municipality or county as provided by the ordinance or order imposing the tax.

(a-1)  Except as provided by Subsection (a-2), if a marketplace rental provider collects the tax imposed under this subchapter, the marketplace rental provider shall report and pay the taxes collected to the municipality or county as provided by the ordinance or order imposing the tax. The marketplace rental provider shall certify to the owner of a motor vehicle rented through the provider that the provider has collected, reported, and paid the tax to the municipality or county. An owner who in good faith accepts the marketplace rental provider's certification is not required to collect, report, or pay the tax to the municipality or county.

(a-2)  The owner of a motor vehicle rented through a marketplace rental provider may elect to report and pay the tax imposed under this subchapter to the municipality or county. If the owner elects to report and pay the tax under this subsection:

(1)  the owner must:

(A)  register as required by Section 152.065, Tax Code; and

(B)  inform the marketplace rental provider in writing of the election; and

(2)  the marketplace rental provider shall forward the tax collected by the provider to the owner.

SECTION 6.  Section 152.001, Tax Code, is amended by amending Subdivision (8) and adding Subdivision (21) to read as follows:

(8)  "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle or the marketplace rental provider 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.

(21)  "Marketplace rental provider" means a person who:

(A)  operates any type of marketplace, including a store with a physical location, an Internet website, a software or mobile application, or a catalog, by which the owner of a motor vehicle lists, markets, or advertises the owner's motor vehicle for rental by others for consideration in this state;

(B)  facilitates the rental of the owner's motor vehicle by another person by communicating between the owner and the other person the terms of the agreement and the acceptance of those terms; and

(C)  directly or indirectly collects or processes the receipts or rental charges paid by the person renting the motor vehicle for the owner of the motor vehicle.

SECTION 7.  Section 152.045, Tax Code, is amended to read as follows:

Sec. 152.045.  COLLECTION OF TAX ON GROSS RENTAL RECEIPTS. (a) Except as otherwise provided by this section or another provision of [~~inconsistent with this chapter and rules adopted under~~] this chapter, an owner of a motor vehicle subject to the tax on gross rental receipts shall collect, report, and pay the tax to the comptroller in the same manner as the tax under Chapter 151 [~~Limited Sales, Excise and Use Tax~~] is collected, reported, and paid by a retailer [~~retailers~~] under that chapter [~~Chapter 151 of this code~~].

(a-1)  Except as provided by Subsection (a-2), if the motor vehicle is rented through a marketplace rental provider, the marketplace rental provider shall collect, report, and pay the tax on gross rental receipts to the comptroller in the manner prescribed by Subsection (a). The marketplace rental provider shall certify to the owner of a motor vehicle rented through the provider that the provider has collected, reported, and paid the tax. An owner who in good faith accepts the marketplace rental provider's certification is not required to collect, report, or pay the tax.

(a-2)  The owner of a motor vehicle rented through a marketplace rental provider may elect to report and pay the tax on gross rental receipts to the comptroller. If the owner elects to report and pay the tax under this subsection:

(1)  the owner must:

(A)  register as required by Section 152.065; and

(B)  inform the marketplace rental provider in writing of the election; and

(2)  the marketplace rental provider shall forward the tax collected by the provider to the owner.

(b)  The owner of a motor vehicle subject to the tax on gross rental receipts or, if the motor vehicle is rented through a marketplace rental provider, the provider, shall add the tax to the rental charge, and when added, the tax is:

(1)  a part of the rental charge;

(2)  a debt owed to the motor vehicle owner or marketplace rental provider, as applicable, by the person renting the vehicle; and

(3)  recoverable at law in the same manner as the rental charge.

(c)  The comptroller may proceed against a person renting a motor vehicle, the owner of the rented motor vehicle, or the marketplace rental provider, as applicable, for any unpaid gross rental receipts tax.

(d)  In addition to any other penalty provided by law, the owner of a motor vehicle subject to the tax on gross rental receipts who is required to file a report as provided by this chapter and who fails to timely file the report shall pay a penalty of $50. If the motor vehicle is rented through a marketplace rental provider and the provider is required to file a report under this chapter but fails to timely file the report, the provider shall pay a penalty of $50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 8.  Section 152.046(b), Tax Code, is amended to read as follows:

(b)  An owner of a motor vehicle on which the motor vehicle sales or use tax has been paid who subsequently uses the vehicle for rental [~~shall collect the gross rental receipts tax imposed by this chapter from the person renting the vehicle. The owner~~] may credit an amount equal to the motor vehicle sales or use tax paid by the owner to the comptroller against the amount of gross rental receipts due from the owner. This credit is not transferable and cannot be applied against tax due and payable from the rental of another vehicle belonging to the same owner.

SECTION 9.  Section 152.063(b), Tax Code, is amended to read as follows:

(b)  Except as otherwise provided by Section 111.0041:

(1)  the [~~The~~] owner of a motor vehicle used for rental purposes shall keep for at least four years after the purchase of the [~~a~~] motor vehicle records and supporting documents containing [~~the following~~] information on the amount of:

(A) [~~(1)~~]  total consideration for the motor vehicle; and

(B) [~~(2)~~]  motor vehicle sales or use tax paid on the motor vehicle; and

(2)  the owner of a motor vehicle used for rental purposes and, if the motor vehicle is rented through a marketplace rental provider, the provider, shall keep for at least four years supporting documents containing information on the amount of:

(A) [~~(3)~~]  gross rental receipts received by the owner or provider, as applicable, from the rental of the motor vehicle; and

(B) [~~(4)~~]  gross rental receipts tax paid to the comptroller by the owner or provider, as applicable, on each motor vehicle used for rental purposes by the owner.

SECTION 10.  Section 152.065, Tax Code, is amended to read as follows:

Sec. 152.065.  REQUIRED PERMITS. A motor vehicle owner or a marketplace rental provider required to collect, report, and pay a tax on gross rental receipts imposed by this chapter and a seller required to collect, report, and pay a tax on a seller-financed sale shall register as a retailer with the comptroller in the same manner as is required of a retailer under Subchapter F, Chapter 151.

SECTION 11.  Subchapter D, Chapter 152, Tax Code, is amended by adding Section 152.070 to read as follows:

Sec. 152.070.  MARKETPLACE RENTAL PROVIDER'S REPORT. A marketplace rental provider shall send to the owner of a motor vehicle that is rented through the provider a report each month that shows the amount of tax collected, reported, and paid for each motor vehicle that the owner owns and that is rented through the provider. The provider is not required to send the report to an owner who elects to report and pay the tax under Section 152.045(a-2).

SECTION 12.  This Act applies only to a rental agreement for the rental of a motor vehicle entered into on or after the effective date of this Act. A rental agreement for the rental of a motor vehicle entered into before the effective date of this Act is governed by the law in effect on the date the rental agreement was entered into, 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 13.  This Act takes effect September 1, 2019.