

AN ACT

relating to the appraisal for ad valorem tax purposes of certain dealer's heavy equipment inventory; providing penalties.

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

SECTION 1. Sections 23.1241(a)(1), (2), (6), (7), (8), and (9), Tax Code, are amended to read as follows:

(1) "Dealer" means a person engaged in the business in this state of selling, leasing, or renting heavy equipment.

(2) "Dealer's heavy equipment inventory" means all items of heavy equipment that a dealer holds for sale, lease, or rent during a 12-month period ~~[at retail]. [The term includes items of heavy equipment that are leased or rented but subject to a purchase option by the lessee or renter.]~~

(6) "Heavy equipment" means self-propelled, self-powered, or pull-type equipment, including farm equipment or a diesel engine, that weighs at least 1,500 ~~[3,000]~~ pounds and is intended to be used for agricultural, construction, industrial, maritime, mining, or forestry uses. The term does not include a motor vehicle that is required by:

(A) Chapter 501, Transportation Code, to be titled; or

(B) Chapter 502, Transportation Code, to be registered.

(7) "Sales price" means:

(A) the total amount of money paid or to be paid to a dealer for the purchase of an item of heavy equipment; or

(B) for a lease or rental [~~with an option to purchase~~], the total amount of the lease or rental payments [~~plus any final consideration, excluding interest~~].

(8) "Subsequent sale" means a dealer-financed sale of an item of heavy equipment that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's heavy equipment inventory in the same calendar year. The term does not include a rental or lease with an unexercised purchase option or without a purchase option.

(9) "Total annual sales" means the total of the:

(A) sales price for each sale from a dealer's heavy equipment inventory in a 12-month period; and

(B) lease and rental payments received for each lease or rental of heavy equipment inventory in a 12-month period.

SECTION 2. Section 23.1241, Tax Code, is amended by amending Subsections (b), (e), and (j) and adding Subsection (b-1) to read as follows:

(b) For the purpose of the computation of property tax, [~~+~~ [~~1~~]] the market value of a dealer's heavy equipment inventory on January 1 is the total annual sales, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the preceding tax year, divided by 12 [~~+~~ and

[~~(2) a sale is considered to occur when possession of an item of heavy equipment is transferred from the dealer to the purchaser~~].

(b-1) For the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory, the sales price of an item of heavy equipment that is sold during the preceding tax year after being leased or rented for a portion of that same tax year is considered to be the sum of the sales price of the item plus the total lease and rental payments received for the item in the preceding tax year.

(e) A dealer is presumed to be an owner of a dealer's heavy equipment inventory on January 1 if, in the 12-month period ending on December 31 of the preceding year, the dealer sold, leased, or rented an item of heavy equipment to a person other than a dealer. The presumption is not rebutted by the fact that a dealer has no item of heavy equipment physically on hand for sale from the dealer's heavy equipment inventory on January 1.

(j) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a declaration required by Subsection (f) shall forfeit a penalty. A tax lien attaches to the dealer's business personal property to secure payment of the penalty. The appropriate district attorney, criminal district attorney, or county attorney may ~~[shall]~~ collect the penalty established by this section in the name of the ~~[chief appraiser or]~~ collector. The chief appraiser may collect the penalty in the name of the chief appraiser. The chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney may sue to enforce compliance with this section. Venue of an action brought under this subsection, including an action for injunctive relief, is in the county in which the violation occurred or in the

1 county in which the owner maintains the owner's principal place of
 2 business or residence. The court may award attorney's fees to a
 3 chief appraiser, district attorney, criminal district attorney, or
 4 county attorney who prevails in a suit to collect a penalty or
 5 enforce compliance with this section. A penalty forfeited under
 6 this subsection is \$1,000 for each month or part of a month in which
 7 a declaration is not filed or timely filed after it is due.

8 SECTION 3. Sections 23.1242(b), (d), (e), (f), and (m), Tax
 9 Code, are amended to read as follows:

10 (b) Except for an item of heavy equipment sold to a dealer,
 11 an item of heavy equipment included in a fleet transaction, ~~[or]~~ an
 12 item of heavy equipment that is the subject of a subsequent sale, or
 13 an item of heavy equipment that is subject to a lease or rental, an
 14 owner or a person who has agreed by contract to pay the owner's
 15 current year property taxes levied against the owner's heavy
 16 equipment inventory shall assign a unit property tax to each item of
 17 heavy equipment sold from a dealer's heavy equipment inventory. In
 18 the case of a lease or rental, the owner shall assign a unit
 19 property tax to each item of heavy equipment leased or rented. The
 20 unit property tax of each item of heavy equipment is determined by
 21 multiplying the sales price of the item or the monthly lease or
 22 rental payment received for the item, as applicable, by the unit
 23 property tax factor. If the transaction is a lease or rental, the
 24 owner shall collect the unit property tax from the lessee or renter
 25 at the time the lessee or renter submits payment for the lease or
 26 rental. The owner of the equipment shall state the amount of the
 27 unit property tax assigned as a separate line item on an invoice.

1 On or before the 10th day of each month the owner shall, together
 2 with the statement filed by the owner as required by this section,
 3 deposit with the collector an amount equal to the total of unit
 4 property tax assigned to all items of heavy equipment sold, leased,
 5 or rented from the dealer's heavy equipment inventory in the
 6 preceding month to which a unit property tax was assigned. The
 7 money shall be deposited by the collector to the credit of the
 8 owner's escrow account for prepayment of property taxes as provided
 9 by this section. An escrow account required by this section is used
 10 to pay property taxes levied against the dealer's heavy equipment
 11 inventory, and the owner shall fund the escrow account as provided
 12 by this subsection.

13 (d) Except as provided by Section 23.1243, the ~~[The]~~ owner
 14 may not withdraw funds in an escrow account created under this
 15 section.

16 (e) The comptroller by rule shall adopt a dealer's heavy
 17 equipment inventory tax statement form. Each month, a dealer shall
 18 complete the form regardless of whether an item of heavy equipment
 19 is sold, leased, or rented. A dealer may use no other form for that
 20 purpose. The statement may include the information the comptroller
 21 considers appropriate but shall include at least the following:

22 (1) a description of each item of heavy equipment
 23 sold, leased, or rented including any unique identification or
 24 serial number affixed to the item by the manufacturer;

25 (2) the sales price of or lease or rental payment
 26 received for the item of heavy equipment, as applicable;

27 (3) the unit property tax of the item of heavy

1 equipment, if any; and

2 (4) the reason no unit property tax is assigned if no
3 unit property tax is assigned.

4 (f) On or before the 10th day of each month, a dealer shall
5 file with the collector the statement covering the sale, lease, or
6 rental of each item of heavy equipment sold, leased, or rented by
7 the dealer in the preceding month. On or before the 10th day of a
8 month following a month in which a dealer does not sell, lease, or
9 rent an item of heavy equipment, the dealer must file the statement
10 with the collector and indicate that no sales, leases, or rentals
11 were made in the prior month. A dealer shall file a copy of the
12 statement with the chief appraiser and retain documentation
13 relating to the disposition of each item of heavy equipment sold and
14 the lease or rental of each item of heavy equipment. A chief
15 appraiser or collector may examine documents held by a dealer as
16 provided by this subsection in the same manner, and subject to the
17 same conditions, as provided by Section 23.1241(g).

18 (m) In addition to other penalties provided by law, a dealer
19 who fails to file or fails to timely file a statement as required by
20 this section shall forfeit a penalty. A tax lien attaches to the
21 dealer's ~~owner's~~ business personal property to secure payment of
22 the penalty. The appropriate district attorney, criminal district
23 attorney, or county attorney may ~~shall~~ collect the penalty
24 established by this section in the name of the ~~chief appraiser or~~
25 collector. The chief appraiser may collect the penalty in the name
26 of the chief appraiser. The chief appraiser or the appropriate
27 district attorney, criminal district attorney, or county attorney

1 may sue to enforce compliance with this section. Venue of an action
2 brought under this subsection, including an action for injunctive
3 relief, is in the county in which the violation occurred or in the
4 county in which the owner maintains the owner's principal place of
5 business or residence. The court may award attorney's fees to a
6 chief appraiser, district attorney, criminal district attorney, or
7 county attorney who prevails in a suit to collect a penalty or
8 enforce compliance with this section. A penalty forfeited under
9 this subsection is \$500 for each month or part of a month in which a
10 statement is not filed or timely filed after it is due.

11 SECTION 4. Subchapter B, Chapter 23, Tax Code, is amended by
12 adding Section 23.1243 to read as follows:

13 Sec. 23.1243. REFUND OF PREPAYMENT OF TAXES ON FLEET
14 TRANSACTION. (a) In this section, "dealer" and "fleet
15 transaction" have the meanings assigned those terms by Section
16 23.1241.

17 (b) A dealer may apply to the chief appraiser for a refund of
18 the unit property tax paid on a sale that is a fleet transaction.

19 (c) The chief appraiser shall determine whether to approve
20 or deny, wholly or partly, the refund requested in the application.
21 The chief appraiser shall deliver a written notice of the chief
22 appraiser's determination to the collector maintaining the escrow
23 account described by Section 23.1242 and to the applicant that
24 states the amount, if any, to be refunded.

25 (d) A collector who receives a notice described by
26 Subsection (c) stating an amount to be refunded shall pay the amount
27 to the dealer not later than the 45th day after the date the

1 collector receives the notice. The dealer shall use the dealer's
2 best efforts to pay the refund to the customer who paid the tax that
3 relates to the fleet transaction for which the refund is requested
4 not later than the 30th day after the date the dealer receives the
5 refund.

6 SECTION 5. Section 41.44(a), Tax Code, is amended to read as
7 follows:

8 (a) Except as provided by Subsections (b), (b-1), (c),
9 (c-1), and (c-2), to be entitled to a hearing and determination of a
10 protest, the property owner initiating the protest must file a
11 written notice of the protest with the appraisal review board
12 having authority to hear the matter protested:

13 (1) before May 1 or not later than the 30th day after
14 the date that notice to the property owner was delivered to the
15 property owner as provided by Section 25.19, if the property is a
16 single-family residence that qualifies for an exemption under
17 Section 11.13, whichever is later;

18 (2) before June 1 or not later than the 30th day after
19 the date that notice was delivered to the property owner as provided
20 by Section 25.19 in connection with any other property, whichever
21 is later;

22 (3) in the case of a protest of a change in the
23 appraisal records ordered as provided by Subchapter A of this
24 chapter or by Chapter 25, not later than the 30th day after the date
25 notice of the change is delivered to the property owner; [~~or~~]

26 (4) in the case of a determination that a change in the
27 use of land appraised under Subchapter C, D, E, or H, Chapter 23,

1 has occurred, not later than the 30th day after the date the notice
2 of the determination is delivered to the property owner; or
3 (5) in the case of a determination of eligibility for a
4 refund under Section 23.1243, not later than the 30th day after the
5 date the notice of the determination is delivered to the property
6 owner.

7 SECTION 6. Section 41.47, Tax Code, is amended by adding
8 Subsection (c) to read as follows:

9 (c) If, in the case of a determination of eligibility for a
10 refund requested under Section 23.1243, the appraisal review board
11 determines that the dealer is entitled to a refund in excess of the
12 amount, if any, to which the chief appraiser determined the dealer
13 to be entitled, the board shall order the chief appraiser to deliver
14 written notice of the board's determination to the collector and
15 the dealer in the manner provided by Section 23.1243(c).

16 SECTION 7. Section 42.01, Tax Code, is amended to read as
17 follows:

18 Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. A property
19 owner is entitled to appeal:

20 (1) an order of the appraisal review board
21 determining:

22 (A) a protest by the property owner as provided
23 by Subchapter C of Chapter 41; ~~[or]~~

24 (B) a determination of an appraisal review board
25 on a motion filed under Section 25.25; or

26 (C) a determination of an appraisal review board
27 of eligibility for a refund requested under Section 23.1243; or

1 (2) an order of the comptroller issued as provided by
2 Subchapter B, Chapter 24, apportioning among the counties the
3 appraised value of railroad rolling stock owned by the property
4 owner.

5 SECTION 8. Sections 23.1241(i) and 23.1242(1), Tax Code,
6 are repealed.

7 SECTION 9. This Act applies only to ad valorem taxes imposed
8 for a tax year beginning on or after the effective date of this Act.

9 SECTION 10. This Act takes effect January 1, 2012.

David Sewhurst

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 2476 was passed by the House on April 27, 2011, by the following vote: Yeas 148, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2476 on May 21, 2011, by the following vote: Yeas 141, Nays 0, 3 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 2476 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Patsy Spaw

Secretary of the Senate

APPROVED: 17 JUN '11

Date

Rick Peery

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
O'CLOCK

JUN 17 2011
Hope M. ...
Secretary of State