

BILL ANALYSIS

Senate Research Center

H.B. 3314
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Tax collection is a core function of the Office of the Comptroller of Public Accounts (comptroller). H.B. 3314 addresses certain problems that serve as impediments to the comptroller's collection actions and provides the comptroller with certain enforcement and collection tools. These additional tools will help with the abatement of fraudulent tax evasion and enhance compliance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 111, Tax Code, by adding Section 111.0102, as follows:

Section 111.0102. SUIT CHALLENGING COLLECTION ACTION. Provides that the venue for and jurisdiction of a suit that challenges or is for the purpose of avoiding a comptroller of public accounts (comptroller) collection action or state tax lien in any manner is exclusively conferred on the district courts of Travis County.

SECTION 2. Amends Section 111.016, Tax Code, by adding Subsections (a-1) and (b-1), as follows:

(a-1) Provides that a person is presumed to have received or collected a tax or money represented to be a tax for the purpose of this section if the person files, or causes to be filed, a tax return or report with the comptroller showing tax due. Authorizes a person, including a person who is on the accrual method of accounting, to rebut this presumption by providing satisfactory documentation to the comptroller that the tax on a transaction or series of transactions was not collected. Provides that the documentation is subject to verification by the comptroller.

(b-1) Provides that, notwithstanding any other provision of this title, the statute of limitation relating to the period during which an individual may be personally assessed by the comptroller, if the tax liability of a corporation, association, limited liability company, limited partnership, or other legal entity which the reasonable individual was employed or associated has either not become final, is the subject to tolling of limitations under Section 111.207, or is subject to a federal bankruptcy proceeding, is stayed until the first anniversary of the date the liability becomes final or the date the bankruptcy proceeding is closed or dismissed.

SECTION 3. Amends Section 111.017, Tax Code, as follows:

Sec. 111.017. SEIZURE AND SALE OF PROPERTY. (a) Creates this subsection from existing text.

(b) Provides that a person commits an offense if the person obstructs, hinders, impedes, or interferes with the comptroller's seizure of the property of a delinquent taxpayer by taking certain actions.

(c) Provides that an offense under Subsection (b) is a Class A misdemeanor.

SECTION 4. Amends Section 111.021, Tax Code, by amending Subsection (d) and adding Subsection (f-1), as follows:

(d) Prohibits a person who receives a notice under this section from avoiding or attempting to avoid compliance with this section by filing an interpleader action in court and depositing the delinquent's or person's funds or other assets into the registry of the court.

(f-1) Provides that a person who fails or refuses to comply with this section after receiving a notice of freeze or levy is liable for a penalty in an amount equal to 50 percent of the amount sought to be frozen or levied. Provides that this penalty is in addition to the liability imposed under Subsection (f). Authorizes that the penalty be assessed and collected by the comptroller using any remedy available to collect other amounts under this title.

SECTION 5. Amends Subchapter B, Chapter 111, Tax Code, by adding Section 111.0511, as follows:

Sec. 111.0511. RESTRICTED OR CONDITIONAL PAYMENTS TO COMPTROLLER PROHIBITED. (a) Defines "taxes."

(b) Provides that unless the restriction of condition is authorized by this title, a restriction or condition placed on a check or other money instrument in payment of taxes by the maker that purports to limit the amount of taxes owed or place a condition on its acceptance or negotiation is void.

SECTION 6. Amends Subchapter B, Chapter 111, Tax Code, by adding Section 111.0611, as follows:

Sec. 111.0611. PERSONAL LIABILITY FOR FRAUDULENT TAX EVASION. (a) Provides that an officer, manager, or director of a corporation, association, or limited liability company, a partner of a general partnership, or a managing general partner of a limited partnership or limited liability partnership who, as an officer, manager, director, or partner, took an action or participated in a fraudulent scheme or fraudulent plan to evade the payment of taxes due under Title 2 or 3 is personally liable for the taxes and any penalty and interest due. Provides that the personal liability of an individual includes liability for the additional 50 percent fraud penalty provided by Section 111.061(b). Requires the comptroller to assess individuals liable under this section in the same manner as other persons or entities are authorized to be assessed under this chapter.

(b) Sets forth the action that may indicate, for the purposes of this section, the existence of a fraudulent scheme or a fraudulent plan to evade the payment of taxes.

(c) Provides that to the extent the comptroller can verify and secure sufficient unencumbered assets of the corporation, association, or partnership to satisfy the liability, an individual's personal liability under Subsection (a) is limited to the amount by which the total tax, penalty, and interest due under this section exceeds those assets.

SECTION 7. Amends Section 113.106, Tax Code, by adding Subsections (e) and (f), as follows:

(e) Requires a person to bring suit to determine the validity of a state tax lien not later than the 10th anniversary of the date the lien was filed. Provides that if more than one state tax lien has been filed relating to the same tax liability, the 10-year limitation period provided by this subsection is calculated from the date of the filing of the first lien relating to the liability.

(f) Provides that a taxpayer is presumed to have received proper notice of the taxpayer's tax liability if the notice is delivered to the taxpayer's last address of record with the comptroller. Authorizes the taxpayer to rebut the presumption by presenting substantive evidence that demonstrates that notice of the tax liability was not received. Provides that if the taxpayer rebuts the presumption of receipt of proper notice with evidence the comptroller considers satisfactory, the period of limitations for filing suit provided by Subsection (e) does not apply.

SECTION 8. Amends Subchapter C, Chapter 152, Tax Code, by adding Section 152.0472, as follows:

Sec. 152.0472. DETERMINATION OF WHETHER LOAN IS FACTORED, ASSIGNED, OR TRANSFERRED. (a) Provides that a seller is not considered to have factored, assigned, or transferred a loan under Section 152.047(g), if certain conditions exist.

(b) Authorizes the seller to elect to pay all unpaid tax imposed under this chapter on the total consideration, notwithstanding Subsection (a). Entitles a seller that makes this election to a credit or reimbursement for the taxes paid under this chapter on the remaining unpaid balance of the contract for which the seller has not received payment or has not otherwise collected the tax due. Requires the seller to take the tax credit or reimbursement on the seller's seller-finance return. Provides that the credit or reimbursement does not accrue interest.

SECTION 9. Amends Section 183.053(b), Tax Code, to prohibit the comptroller from setting the amount of security at less than \$1,000 or more than the greater of \$100,000 or four times the amount of the permittee's average monthly tax liability, rather than \$50,000.

SECTION 10. Effective date: upon passage or September 1, 2007.