

## CHAPTER 29

## H.B. No. 995

## AN ACT

relating to the collection and disposition of the motor vehicle sales tax on a motor vehicle sold using seller financing.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 152.001, Tax Code, is amended by adding Subdivision (16) to read as follows:

(16) "Seller-financed sale" means a retail sale of a motor vehicle by a dealer licensed under Article 6686, Revised Statutes, 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.

SECTION 2. Section 152.021(a), Tax Code, is amended to read as follows:

(a) A tax is imposed on every retail sale of every motor vehicle sold in this state. *Except as provided by Section 152.047, the [The] tax is an obligation of and shall be paid by the purchaser of the motor vehicle.*

SECTION 3. Sections 152.041(b) and (c), Tax Code, are amended to read as follows

(b) *Except as provided by Section 152.069, the [The] tax assessor-collector may not accept an application unless the tax and any penalty is paid.*

(c) *Except as provided by Section 152.047, the [The] tax imposed by Section 152.021 of this code is due on the 20th working day after the day that the motor vehicle is delivered to the purchaser.*

SECTION 4. Subchapter C, Chapter 152, Tax Code, is amended by adding Sections 152.047 and 152.048 to read as follows:

*Sec. 152.047. COLLECTION OF TAX ON SELLER-FINANCED SALE. (a) Except as inconsistent with this chapter and rules adopted under this chapter, the seller of a motor vehicle shall report and pay the tax imposed on a seller-financed sale to the comptroller on the seller's receipts from seller-financed sales in the same manner as the sales tax is reported and paid by a retailer under Chapter 151.*

(b) *If a note, mortgage, account receivable, or other document evidencing the purchaser's indebtedness to the seller of a vehicle sold subject to a seller-financed sale does not bear interest, it will be conclusively presumed that the total consideration for the sale is principal*

(c) *If a note, mortgage, account receivable, or other document evidencing the purchaser's indebtedness to the seller of a vehicle sold subject to a seller-financed sale bears interest, it is conclusively presumed that interest accrues and is paid by the purchaser on a straight line basis.*

(d) *The seller shall add the tax imposed on a seller-financed sale to the sales price of the vehicle sold, and when added, the tax is:*

- (1) a part of the sales price;
- (2) a debt owed to the seller by the purchaser; and
- (3) recoverable at law in the same manner as the sales price.

(e) Regardless of the accounting method used by the seller, the seller shall collect and pay the tax imposed on a seller-financed sale to the comptroller as the seller receives the proceeds of the sale.

(f) If the seller fails to apply, not later than the 60th day after the date the motor vehicle is delivered to the purchaser, for registration and a Texas certificate of title for a motor vehicle sold in a seller-financed sale in accordance with Section 152.069, the seller is liable for all unpaid tax on the total consideration, and the tax is due and must be sent to the comptroller with the first report after the expiration of the prescribed period.

(g) If a seller factors, assigns, or otherwise transfers the right to receive payments, all unpaid tax is due on the total consideration not reported at the time the agreement is factored, assigned, or otherwise transferred. The seller shall report and submit the tax in the report period in which the right to receive the payment is factored, assigned, or otherwise transferred. The seller may not take a deduction in the amount of tax due if a transfer at a discount is made.

(h) The comptroller may proceed against the purchaser in a seller-financed sale for the amount of any tax not paid by the purchaser.

(i) The comptroller shall adopt rules and promulgate forms necessary to implement this section.

Sec. 152.048. **GROSS RECEIPTS PRESUMED SUBJECT TO TAX.** (a) All gross receipts of a seller required to obtain a permit under Section 152.065 are presumed to be subject to the provisions of this code.

(b) The presumption provided by Subsection (a) does not apply to receipts:

- (1) on which a tax imposed under other law is computed and paid to the comptroller; or
- (2) for which a properly completed resale or exemption certificate is accepted by the seller.

(c) The seller may overcome the presumption under Subsection (a) by credible evidence that the receipts are not from a seller-financed sale or that the tax on those receipts has been sent to the comptroller.

SECTION 5. Subchapter D, Chapter 152, Tax Code, is amended by adding Section 152.0635 to read as follows:

Sec. 152.0635. **RECORDS OF CERTAIN SELLERS.** (a) In addition to the requirements prescribed by Section 152.063, a seller engaged in seller-financed sales who has a permit under Section 152.065 shall keep the records required by this section.

(b) For seller-financed sales, the seller shall keep at the seller's principal office for at least four years from the date on which the seller receives the final payment for the motor vehicle:

- (1) the lienholder's copy of the receipt for title application, registration, and motor vehicle tax issued by a county tax assessor-collector; and
- (2) a ledger or other document containing a complete record of the payment history for that motor vehicle, including:

- (A) the name and address of the purchaser;
- (B) the total consideration;
- (C) the amount of the down payment received at the time the motor vehicle is sold;
- (D) the date and amount of each subsequent payment;
- (E) the date of sale; and
- (F) the date of any repossession.

(c) For retail sales paid in full at the time of sale, the seller shall keep at the seller's principal office for at least four years from the date of the sale documentation of complete payment in the form of:

(1) a copy of the payment instrument or a receipt for cash received; and

(2) a copy of the receipt for title application, registration, and motor vehicle tax issued by the county tax assessor-collector or a statement by the purchaser that is signed and dated and indicates the date that each of the documents necessary to apply for the title, register the vehicle, and pay the motor vehicle sales tax were provided to the purchaser by the seller.

(d) The document required under Subsection (c)(2) shall also include a statement that the seller advised the purchaser that the purchaser must pay a tax to the county tax assessor-collector.

(e) For sales for resale, the seller shall keep at the seller's principal office for at least four years from the date of the sale the purchaser's written statement of resale on a form prescribed by the comptroller.

SECTION 6. Section 152.065, Tax Code, is amended to read as follows:

Sec. 152.065. **REQUIRED PERMITS [REGISTRATION AS A RETAILER, PERMIT].** A motor vehicle owner 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, [of] Chapter 151 [of this code. The owner shall also obtain from the comptroller a motor vehicle retailer's permit].

SECTION 7. Section 152.068(a), Tax Code, is amended to read as follows:

(a) The comptroller may revoke or suspend any one or more of the [~~motor vehicle retailer's~~] permits held by a person if that person fails to comply with a provision of this chapter or with a rule of the comptroller relating to a tax imposed by this chapter.

SECTION 8. Subchapter D, Chapter 152, Tax Code, is amended by adding Section 152.069 to read as follows:

Sec. 152.069. **REGISTRATION OF MOTOR VEHICLE USING SELLER-FINANCING.** (a) The seller of a motor vehicle sold in a seller-financed sale shall apply for the registration of, and a Texas certificate of title for, the motor vehicle in the name of the purchaser to the appropriate county tax assessor-collector.

(b) The seller shall provide to the county tax assessor-collector a joint affidavit as prescribed by Section 152.062 in lieu of the motor vehicle sales tax imposed by Section 152.021. The affidavit shall include the seller's permit identification number issued by the comptroller.

SECTION 9. Subsection (a), Section 10, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-10, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as provided by Subsections (c-1), (c-2), (c-3), and (c-4) of this section, on Monday of each week each County Tax Collector shall deposit in the County Depository of his County to the credit of the County Road and Bridge Fund an amount equal to one hundred per cent (100%) of the net collections made hereunder during the preceding week until the amount so deposited for the current calendar year shall have reached a total sum of Sixty Thousand Dollars (\$60,000), plus Three Hundred and Fifty Dollars (\$350) for each mile of county road, not to exceed five hundred (500) miles, maintained by the County according to the latest data available from the State Department of Highways and Public Transportation, plus an amount equal to five per cent (5%) of the tax and penalties collected by the County Tax Collector under Chapter 152, Tax Code, in the preceding calendar year, plus an amount equal to five per cent (5%) of the tax and penalties collected by the Comptroller of Public Accounts under Section 152.047, Tax Code, in the preceding calendar year. All of the amount of the tax and penalties collected under Chapter 152, Tax Code, in the preceding calendar year that is retained by a county under this subsection shall be used for county road construction, maintenance, and rehabilitation, for bridge construction, maintenance, and rehabilitation, for purchase of right-of-way for road or highway purposes, or for relocation of utilities for road or highway purposes. On or before January 30 of each year, each county shall file a report, in a form promulgated by the State Department of Highways and Public Transportation, with the State Engineer-Director for the State Department of Highways and

Public Transportation that accurately sets forth the amounts and purposes of all expenditures of the tax and penalties collected under Chapter 152, Tax Code, and retained by the county under this subsection.

SECTION 10. Section 152.103(a), Tax Code, is amended to read as follows:

(a) A seller commits an offense if he fails to make and retain complete records for the period of four years as provided by *this chapter* [~~Section 152.063(a) of this code~~].

SECTION 11. This Act takes effect October 1, 1993, and applies to the sale of a motor vehicle on or after that date. The sale of a motor vehicle before the effective date of this Act is governed by the law in effect when the motor vehicle was sold, and that law is continued in effect for that purpose.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 23, 1993, by a non-record vote; passed by the Senate on April 6, 1993, by a viva-voce vote.

Approved April 13, 1993.

Effective Oct. 1, 1993.