

CHAPTER 1031

S.B. No. 893

AN ACT

relating to technical changes to statutes involving certain tax provisions including those administered by the comptroller, to the definitions of certain items taxed under the sales tax and controlled substance tax laws, to limitations on certain municipal tax rates, to the duties of the appraisal review board, and to delinquent taxes and tax liens; revising references in the inheritance tax statute to federal tax code provisions concerning credits.

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

SECTION 1. Subsection (e), Section 1.111, Tax Code, is amended to read as follows:

(e) An agreement between ~~[an agent for]~~ a property owner *or the owner's agent* and the chief appraiser ~~[relating to a matter that may be protested to the appraisal review board]~~ is ~~[not]~~ final *if the agreement relates to a matter:*

- (1) *which may be protested to the appraisal review board or on which a protest has been filed but not determined [unless approved] by the [appraisal review] board; or*
- (2) *which may be corrected under Section 25.25 or on which a motion for correction under that section has been filed but not determined by the board.*

SECTION 2. Section 25.25, Tax Code, is amended by adding Subsections (h) through (j) to read as follows:

(h) The appraisal review board, on the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, shall by written order correct an error that resulted in an incorrect appraised value for the owner's property.

(i) A person who acquires property after January 1 of the tax year at issue is entitled to file any motion that this section authorizes the person who owned the property on January 1 of that year to file, if the deadline for filing the motion has not passed.

(j) If during the pendency of a motion under this section the ownership of property subject to the motion changes, the new owner of the property is entitled to proceed with the motion in the same manner as the property owner who filed the motion.

SECTION 3. Section 32.01, Tax Code, is amended to read as follows:

Sec. 32.01. TAX LIEN. (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on *the* ~~[that]~~ property, whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

(b) *A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.*

(c) *The lien under this section is perfected on attachment and, except as provided by Section 32.03(b), perfection requires no further action by the taxing unit.*

SECTION 4. Section 33.41, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) *In a suit brought under Subsection (a), a taxing unit may foreclose any other lien on the property in favor of the taxing unit or enforce personal liability of the property owner for the other lien.*

SECTION 5. Section 41.01, Tax Code, is amended to read as follows:

Sec. 41.01. *DUTIES [SCOPE] OF APPRAISAL REVIEW BOARD.* The appraisal review board shall ~~[examine the appraisal records for the appraisal district to determine whether]:~~

(1) *determine protests initiated by property owners [appraisals are substantially uniform in terms of their relationship to the appraised value required by law];*

(2) *determine challenges initiated by taxing units [an exemption or a partial exemption is improperly granted];*

(3) *correct clerical errors in the appraisal records and the appraisal rolls [and is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code]; [or]*

(4) *act on motions to correct appraisal rolls under Section 25.25;*

(5) *determine whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23; and*

(6) *take any other action or make any other determination that this title specifically authorizes or requires [the records do not conform to the requirements of law in any other respect].*

SECTION 6. Section 41.02, Tax Code, is amended to read as follows:

Sec. 41.02. *ACTION BY BOARD.* After making a determination or decision under Section 41.01, [if after reviewing the appraisal records] the appraisal review board [finds that appraisals are not substantially uniform or that the records do not conform to the requirements of law in some other respect, the board] shall [refer the matter to the appraisal office and] by written order [shall] direct the chief appraiser to correct or change the appraisal [make the reappraisals or corrections in the] records or the appraisal roll [that are necessary] to conform the appraisal records or the appraisal roll to the board's determination or decision [requirements of law].

SECTION 7. The heading of Section 41.12, Tax Code, is amended to read as follows:

Sec. 41.12. *APPROVAL [COMPLETION] OF APPRAISAL RECORDS [REVIEW] BY BOARD.*

SECTION 8. Subsection (a), Section 41.12, Tax Code, is amended to read as follows:

(a) *By July 20, the [The] appraisal review board shall:*

(1) *hear and determine all or substantially all timely filed protests;*

(2) *determine all timely filed challenges;*

(3) *[complete its review of the appraisal records, approve the records, and] submit a list of its approved changes in the records to the chief appraiser; and*

(4) *approve the records [by July 20].*

SECTION 9. Section 42.225, Tax Code, is amended to read as follows:

Sec. 42.225. *PROPERTY OWNER'S RIGHT TO APPEAL THROUGH [BINDING] ARBITRATION.* (a) *On motion by a [A] property owner who appeals an appraisal review board order under this chapter, the court shall submit the appeal to nonbinding [is entitled to have the appeal resolved through binding] arbitration. The court shall order the nonbinding*

arbitration to be conducted in accordance with Chapter 154, Civil Practice and Remedies Code. If the appeal proceeds to trial following an arbitration award or finding under this subsection, either party may introduce the award or finding into evidence. In addition, the court shall award the property owner reasonable attorney fees if the trial was not requested by the property owner and the determination of the appeal results in an appraised value for the owner's property that is equal to or less than the appraised value under the arbitration award or finding. However, the amount of an award of attorney fees under this subsection is subject to the same limitations as those provided by Section 42.29.

(b) On motion by the property owner, the court shall order the parties to an appeal of an appraisal review board order under this chapter to submit to binding arbitration if the appraisal district joins in the motion or consents to the arbitration. A binding arbitration award under this subsection is binding and enforceable in the same manner as a contract obligation ~~[and shall appoint an impartial third party to conduct the arbitration. The impartial third party is appointed by the court and serves as provided by Subchapter C, Chapter 154, Civil Practice and Remedies Code].~~

(c) ~~The court shall appoint an impartial third party to conduct an arbitration under this section. The impartial third party is appointed by the court and serves as provided by Subchapter C, Chapter 154, Civil Practice and Remedies Code.~~

(d) Each party or counsel for the party may present the position of the party before the impartial third party, who must render a specific arbitration award ~~[resolving the appeal].~~

~~[(d) Except as provided by Subsection (e), an arbitration award is binding and enforceable in the same manner as a contract obligation if:~~

~~[(1) in a motion filed under Subsection (b), the property owner stipulates that the award is to be binding on all the parties; or~~

~~[(2) before the rendition of the award, the parties agree to be bound.]~~

~~(e) Prior to submission of a case to arbitration the court shall determine matters related to jurisdiction, venue, and interpretation of the law. [An arbitration award is not binding if it results or would result in an amount of taxes on the property that exceeds the amount of taxes assessed on the property under the order from which the appeal is taken.]~~

(f) ~~Except as provided in this section, an [An] arbitration award may include any remedy or relief that a court could order under this chapter.~~

SECTION 10. Subdivision (3), Subsection (f), Section 11, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) If an authority created by a principal city having a population of more than 800,000 adds territory that is a city or town that imposes an additional sales and use tax under Chapter 321, Tax Code, the additional sales and use tax is repealed as provided by Section 321.1025, Tax Code. The effective date for the repeal and for the imposition of the tax authorized to be collected under Section 16 of this Act in the added territory is the date that, under Section 321.102(b) ~~[321.102(a)]~~, Tax Code, the repeal of the additional sales and use tax is effective in the territory.

SECTION 11. Subsection (p), Section 4A, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(p) A city that is authorized by this section to impose, reduce, increase, or abolish the tax under this section may, at the same time and on the same ballot, impose, reduce, increase, or abolish the additional sales and use tax imposed under Section 321.101(b), Tax Code, if the city is authorized by Chapter 321, Tax Code, to impose, reduce, increase, or abolish the additional sales and use tax. ~~[The combined rate of the tax under this section and the additional sales and use tax imposed under Section 321.101(b), Tax Code, may not exceed one-half of one percent. An election adopting a combined rate of the tax under this section and the additional sales and use tax that exceeds one-half of one percent has no effect.]~~ The city must follow, in relation to the imposition, reduction, increase, or abolishment of the additional sales and use tax imposed under Section 321.101(b), Tax Code, the procedures of that chapter, except that in an election to impose, reduce, increase, or abolish the tax under this section and the additional sales and use tax the ballot shall be printed to provide for voting for or against

the proposition: "The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of _____ of one percent (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate) and the adoption of an additional sales and use tax within the city at the rate of _____ of one percent to be used to reduce the property tax rate" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

SECTION 12. Subsection (e), Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) If an eligible city adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items within the eligible city at a rate *approved by the governing body of the eligible city*. *The rate must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent.* There is also imposed an excise tax on the use, storage, or other consumption within the eligible city of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective within the eligible city. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

SECTION 13. Subsections (b) and (c), Section 21.22, Tax Code, are amended to read as follows:

(b) The *comptroller [board]*, in prescribing the contents of the form, shall ensure that the form requires the person to furnish the information necessary to identify the mobile home and determine its ownership, to name the person for whom the mobile home was moved, and to state the address of the place from which and the place to which the mobile home was moved.

(c) A person required to make a record of the movement of a mobile home shall keep the record for the period of time prescribed by the *comptroller [board]*. He shall keep the record at his principal place of business if he has one, and if he does not have one, he shall keep the record at his principal residence.

SECTION 14. Subsection (j), Section 23.54, Tax Code, is amended to read as follows:

(j) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the *five [10]* preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that its eligibility has ended, he shall add the difference between the appraised value of the land under this subchapter and the market value of the land to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

SECTION 15. Subsection (d), Section 24.02, Tax Code, is amended to read as follows:

(d) Reports must be filed before March 1. For good cause shown the *comptroller [board]* may extend the filing deadline ~~[by written order]~~ for a single period not to exceed 60 days.

SECTION 16. Subsection (a), Section 33.48, Tax Code, is amended to read as follows:

(a) In addition to other costs authorized by law, a taxing unit is entitled to recover the following costs and expenses in a suit to collect a delinquent tax:

- (1) all usual court costs, including the cost of serving process;
- (2) *costs of filing for record a notice of lis pendens against property;*
- (3) expenses of foreclosure sale;
- (4) [(3)] reasonable expenses, subject to approval by the court, that are incurred by the taxing unit in determining the name, identity, and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due; and

(5) [(4)] reasonable attorney's fees approved by the court and not exceeding 15 percent of the total amount of taxes, penalties, and interest ~~[adjudged]~~ due the unit.

SECTION 17. Subsection (a), Section 41.461, Tax Code, is amended to read as follows:

(a) At least 14 days before a hearing on a protest, the chief appraiser shall:

(1) deliver a copy of the pamphlet prepared by the *comptroller* [~~State Property Tax Board~~] under Section 5.06(a) to the property owner initiating the protest if the owner is representing himself, or to an agent representing the owner if requested by the agent;

(2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue; and

(3) deliver a copy of the hearing procedures established by the appraisal review board under Section 41.66 to the property owner.

SECTION 18. Section 101.007, Tax Code, is amended to read as follows:

Sec. 101.007. REFERENCES TO STATE OFFICERS. A reference in this *code* [title] to the comptroller, the treasurer, or another officer includes authorized representatives and employees of the officer unless the provision indicates that only the officer is intended in the reference.

SECTION 19. Section 151.0048, Tax Code, is amended to read as follows:

Sec. 151.0048. [~~“~~]REAL PROPERTY SERVICE.[~~”~~] “Real property service” means:

(1) landscaping;

(2) the care and maintenance of lawns, yards, or ornamental trees or other plants;

(3) the removal or collection of garbage, rubbish, or other solid waste other than:

(A) hazardous waste;

(B) industrial solid waste;

(C) waste material that results from an activity associated with the exploration, development, or production of oil, gas, geothermal resources, or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; [~~and~~]

(D) domestic sewage or an irrigation return flow, to the extent the sewage or return flow does not constitute garbage or rubbish; *and*

(E) *industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code;*

(4) building or grounds cleaning, janitorial, or custodial services;

(5) a structural pest control service covered by Section 2, Texas Structural Pest Control Act (Article 135b-6, Vernon’s Texas Civil Statutes); or

(6) the surveying of real property.

SECTION 20. Section 151.058, Tax Code, is amended to read as follows:

Sec. 151.058. *PROPERTY USED TO PROVIDE TAXABLE SERVICES AND SALE PRICE OF TAXABLE* [~~REPAIR~~] SERVICES. (a) A person performing [~~repair~~] services taxable under this chapter is the consumer of machinery and equipment used in performing the *services* [~~service~~].

(b) The total amount charged for a [~~repair~~] service taxable under this chapter is subject to tax, including charges for labor, materials, overhead, and profit, *regardless of whether such charges are separately identified to the purchaser of the service.*

SECTION 21. Subsection (a), Section 151.104, Tax Code, is amended to read as follows:

(a) A sale of a *taxable item* [~~tangible personal property~~] by a person for delivery in this state is presumed to be a sale for storage, use, or consumption in this state unless a resale or exemption certificate is accepted by the seller.

SECTION 22. Subsection (b), Section 151.320, Tax Code, is amended to read as follows:

(b) “Magazine” means a publication that is usually paperbacked and sometimes illustrated, that appears at a regular interval, and that contains stories, articles, and essays by various writers and advertisements. “Magazine” *does not mean the publication of current information which is taxable pursuant to Section 151.0038 of this code as an “information service.”*

SECTION 23. Section 159.001, Tax Code, is amended to read as follows:

Sec. 159.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Counterfeit substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Dealer" means a person who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state:

(A) seven grams or more of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance; [or]

(B) *fifty dosage units or more of a taxable substance not commonly sold by weight, consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance; or*

(C) more than four ounces of a taxable substance consisting of or containing marihuana.

(4) "Marihuana" has the meaning assigned by Section 481.002, Health and Safety Code.

(5) "Simulated controlled substance" has the meaning assigned by Section 482.001, Health and Safety Code.

(6) "Tax payment certificate" means a stamp or other device provided by the comptroller under Section 159.003 of this code for use under this chapter.

(7) "Taxable substance" means a controlled substance, a counterfeit substance, a simulated controlled substance, or marihuana, or a mixture of any materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marihuana.

(8) "*Dosage unit*" means a tablet, pill, capsule, vial, ampule, or other identifiable or separated unit designed or packaged to be used, taken, or ingested at one time.

SECTION 24. Subdivisions (8) and (9), Section 211.001, Tax Code, are amended to read as follows:

(8) "Generation-skipping transfer" means a transfer for which a credit for state taxes is allowable under Section 2604 [2602(e)(5)(C)], Internal Revenue Code.

(9) "Generation-skipping transfer tax credit" means the maximum amount of the credit for state death taxes allowable under Section 2604 [2602(e)(5)(C)], Internal Revenue Code.

SECTION 25. Section 321.101, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) *For the purposes of Subsection (f), "territory" in a municipality having a population of 5,000 or less and bordering on the Gulf of Mexico does not include any area covered by water and in which no person has a place of business to which a sales tax permit issued under Subchapter F of Chapter 151 applies.*

SECTION 26. This Act takes effect September 1, 1993.

SECTION 27. 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 the Senate on April 29, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 30, 1993, by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote.

Filed without signature June 19, 1993.

Effective Sept. 1, 1993.

- (1) the petitioner's:
 - (A) full true name;
 - (B) sex;
 - (C) race;
 - (D) date of birth;
 - (E) driver's license number of any license issued within the past 10 years;
 - (F) social security number; and
 - (G) FBI number or SID number, if known, or any other known reference number to a criminal history record system;

(2) any offense charged against the petitioner above the grade of Class C misdemeanor; *and*

(3) the case number and court of offense if a warrant was issued or if a charging instrument was filed or presented[;

~~[(4) a certified copy of any docket sheet, warrant, charging instrument, complaint, motion to dismiss, plea, verdict, judgment, sentence, or probation order filed in any cause arising out of a transaction under Subdivision (3); and~~

~~[(5) a completed fingerprint card on a form approved by the Department of Public Safety].~~

SECTION 2. Sections 32.21(c) and (d), Family Code, are repealed.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. 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 May 4, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1691 on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 22, 1993: Yeas 31, Nays 0.

Filed without signature June 19, 1993.

Effective Sept. 1, 1993.