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State Tax Return

TEXAS ROUNDUP – THE 81ST REGULAR SESSION

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On June 1, 2009, the 81st Regular Session of the Texas Legislature adjourned *sine die*. Although more than 700 tax-related bills were introduced during the session, far fewer bills passed both the House and Senate. The legislature's decision not to pass significant tax measures may be largely attributed to the weakened economy and the resulting budgetary constraints facing legislators.

Legislators may also have been influenced by the Comptroller's desire to postpone significant changes to the revised franchise tax passed in 2005 and effective for reports due on or after January 1, 2008. The Comptroller's Office has indicated a desire to have at least two years of filed return data before proposing or supporting modifications to the revised franchise tax.

By the end of the session, 89 tax-related bills passed the House and Senate and proceeded to Governor Perry's desk. Many of these bills passed at the end of the legislative session. As of June 8, 2009, only 13 of the bills had been signed by the governor. The remaining bills may be signed or vetoed or automatically become law. During the legislative session, the governor generally had 10 days after receiving a bill to either sign or veto. If the legislative session ends within 10 days of the governor's receipt of any legislation, the governor has an additional 20 days (from adjournment) to sign or veto such bills.

The following is a summary of significant tax-related bills that are on the governor's desk. Where applicable, bills already signed by the governor are noted.

I. Revised Franchise Tax (*i.e.*, the Margin Tax)

- A. Carbon Dioxide Sequestration Credit** - HB 469 provides a franchise tax incentive related to the sequestration of carbon dioxide in geologic formations. The purpose of this bill is to promote the building of new large-scale clean coal power plants that capture at least 70 percent of the carbon dioxide produced. The bill directs the Comptroller to issue franchise tax credits of 10 percent of the total capital costs or \$100 million per qualifying project, whichever is less. The carbon dioxide captured in these new facilities may be used in enhanced oil-recovery projects, and the bill provides that the current reduced severance tax rate for man-made carbon dioxide used in enhanced oil recovery will apply to the use of carbon dioxide from clean energy projects for 30 years.
- B. Apportionment of Certain Securities** - HB 4611 modifies Sec. 171.106 and the apportionment of margin to Texas. It is a clarification providing that if a lending institution categorizes a loan or security as “Securities Available for Sale” or “Trading Securities” under Financial Accounting Standard 115, the gross proceeds of the sale of that loan or security will be considered gross receipts for apportionment purposes.
- C. Small Business Exemption** - HB 4765 increases the small business exemption under Sec. 171.002(d). For report years 2010 and 2011, businesses will be exempt from the revised franchise tax if their total revenue is less than or equal to \$1 million – raising the exemption from the previous bar of \$300,000. For report years after 2010, business will be exempt from the revised franchise tax if their total revenue is less than or equal to \$600,000. The bill also provides a phase-in of the small business discount provided in Sec. 171.0021.

II. Sales Tax Legislation

- A. School Supplies Exemption** - HB 1801 expands a sales tax exemption. Sec. 151.327 currently exempts backpacks and clothing from sales and use tax for three days in August, before the start of the school year. This bill will extend the sales tax exemption to include school supplies, as defined by the Streamlined Sales Tax Agreement, purchased during the same period.
- B. Agricultural Property Exemption** - HB 3144 expands a sales tax exemption. Sec. 151.316(a) currently exempts certain agricultural items from sales and use tax. This bill will extend the exemption to tangible personal property, including tires, used as components of motor vehicles, machinery, or other equipment exclusively used on a farm or ranch for certain agricultural purposes. The bill will also extend the exemption to machinery and equipment exclusively used in an agricultural aircraft operation and to tangible personal property used for or incorporated into a structure that is used for the disposal of poultry carcasses.

- C. **Sales Tax Data Sharing** - SB 636 will require the Comptroller to provide, upon request, detailed sales tax information to counties and other local government entities that impose sales and use tax. Only municipalities can currently obtain detailed information related to the sales tax amounts distributed to the municipalities from the Comptroller. Local government entities will now be allowed to request detailed information regarding the tax paid to them during the preceding or current calendar year by each person doing business in the jurisdiction who annually remits state and local sales tax payments of more than \$25,000. The bill provides for request procedures, confidentiality of information provided, authorized uses for the information, fees for compiling and providing the information, and application of open-meeting provisions.
- D. **Restriction of Certain Sales Tax Refunds** - SB 1199 will restrict the availability of refunds available to religious, educational, and public-service organizations claiming an exemption and seeking to apply the exemption retroactively. Currently, refunds based upon the retroactive application of a religious, educational, and public-service organization exemption can be applied to the prior four years. This bill will prohibit a refund for sales taxes paid by an organization before either the date the organization applied for an exemption or the date of a tax assessment as the result of an audit by the Comptroller, whichever occurs earlier.
- E. **Film Production Exemption** - SB 1929 is intended to promote the Texas film production industry and increase the number of soundstages and production facilities across the state. The bill sets forth provisions relating to the designation of qualified media production locations in media production development zones and to exemptions from the sales and use tax for items used for media production facilities in qualified media production locations. The sale, lease, or rental of a taxable item will be exempted from the sales and use tax for a maximum of two years if the item is used in connection with a building or facility at a qualified media production location that is to be used exclusively as a media production facility.

III. Hotel Tax

- A. **More Hotel Occupancy Taxes** - A number of bills will permit counties to impose hotel occupancy taxes within their jurisdictions. These hotel occupancy tax bills authorize imposition of taxes and their use for such purposes as building coliseums, collection and removal of trash from beaches, and promotion of tourism within the county. See: HB 749, HB 1275, HB 3136, HB 3669.
- B. **Room Tax Authorized for Certain Municipal Developments:** HB 2032 was signed by the governor on May 30, 2009, and took effect immediately. The bill amends Sec. 334.0082 to enable *certain* municipalities to raise

revenue for the development of convention and meeting spaces. The bill also provides that the municipality can levy a hotel occupancy tax at a rate not to exceed 2 percent.

IV. Motor Fuels Tax

Renewable Diesel Incentive - HB 2582 amends the Fuel Ethanol and Biodiesel Production Incentive Program to extend the definition of “renewable diesel” to include newly developed nonoxygenated bio-based hydrocarbon fuels. This broader definition will extend the tax exemption provided in Sec. 162.204(a) to newly developed fuels and would allow the second- and third-generation biofuels to qualify for Texas’s biodiesel production incentives.

V. Property Tax Legislation

- A. **Tax Study Frequency** - HB 8 reduces the frequency of the Comptroller’s property tax studies for certain districts. Currently, Government Code Sec. 403.302 requires the Comptroller to conduct an annual study to determine the taxable value of property in each of the state’s school districts so that the state may equitably distribute education funds. Rather than an annual study, the Comptroller will conduct a biannual study for those districts whose most recent study resulted in a determination by the Comptroller that the school district’s local value was valid. In years in which a district’s property values are not assessed, the Comptroller will conduct a review of the district’s standards, procedures, and methodology. For those school districts whose most recent study resulted in a determination by the Comptroller that the school district’s local value was invalid, the Comptroller will continue to conduct annual studies.
- B. **Disposition of Excess Tax Sale Proceeds** - HB 406 became law on May 29, 2009, and will be effective on September 1, 2009. It relates to the disposition of excess proceeds of a tax sale of real property or foreclosure of a tax lien on real property. Sec. 34.021 was amended to require a person conducting a sale for the foreclosure of a tax lien to pay to the clerk of court, within 10 days of the sale, any excess proceeds after payment of all amounts due to participants in the sale.
- C. **Reauthorization of Property Redevelopment and Tax Abatement Act** - HB 773 reauthorizes the Property Redevelopment and Tax Abatement Act, which allows local governments to issue tax abatements. The reauthorization will run through September 1, 2019.
- D. **Dedicated Tax Increment Fund** - HB 752 applies only to the City of Grand Prairie and became effective immediately with the governor’s signature on May 19, 2009. Under current law, a municipality can enter into contracts with local school districts to dedicate revenue from a tax

increment fund to the district for the acquisition, construction, or reconstruction of an educational facility if that municipality has a population smaller than 120,000. HB 752 increases the population limit from 120,000 to 130,000.

- E. Foreclosure Sales' Impact on Valuation** - HB 1038 amends Sec. 23.01 to prohibit the chief appraiser of a district, when appraising a residential homestead, from excluding the value of other residential property in the area that was sold at a foreclosure sale conducted in any of the three years preceding the tax year of the appraisal or from excluding the value of other residential property in the area that has decreased in market value.
- F. Written Authorization Requirement** - HB 1203, which was signed by the governor on May 26, 2009, and became effective immediately, creates a statutory requirement that the designation of a person to act as an agent for a property owner involved in a property tax matter be provided on a form prescribed by the Comptroller and given to the appraisal district before the authorization becomes effective.
- G. Refunds Approval Thresholds** - HB 1205, which was signed by the governor on May 20, 2009, amends Sec. 31.11 governing the process by which a taxing unit refunds overpayments or erroneous payments of property taxes. Before this bill passed, a tax assessor-collector had to seek approval of refunds above certain thresholds. HB 1205 increased the thresholds requiring approval by the taxing unit to \$5,000 for counties of 2 million or more and \$500 for any other taxing unit. For tax assessors who collect taxes for more than one taxing unit, there is a \$5,000 threshold for counties of 2 million or more and a \$2,500 threshold for a refund paid by any other taxing unit.
- H. Tax Installment Payments in Disaster Areas** - HB 1257 relates to the payment of certain *ad valorem* taxes in installments. Currently, only owners of a residence that was damaged by a natural disaster and is located in a declared disaster area may pay their property taxes in four installments under Sec. 31.032. HB 1257 will extend the installment-payment option to allow disaster-damaged business entities with \$5 million or less in gross receipts the same option of paying business property taxes in four installments over the course of the year. The bill also amends Sec. 11.135 so that an owner of a qualified residential structure rendered uninhabitable by a disaster may continue to receive the exemption for the structure, the land, and improvements while constructing a replacement qualified residential structure on the land, if the owner does not establish a different principal residence.
- I. Inventory Tax Statements for Certain Retailers** - HB 2071 was signed by the governor on May 23, 2009, and will become effective on September

1, 2009. Since 1994, taxing jurisdictions, as well as the Comptroller, have required dealers of motor vehicles, heavy equipment, vessels, and outboard motors and retailers of units of manufactured housing to file an inventory tax statement with their local tax assessor-collector by the 10th day of the month following the reporting month, regardless of whether a sale occurred in the previous month. In response to a judicial opinion that questioned the requirement that the statements be filed in months when no sales occurred, HB 2071 requires that inventory tax statements be filed monthly, regardless of sales.

- J. Appraisal Review Board Mandatory Training** - HB 2317 requires a comprehensive training course for new appraisal review board members and continuing education for all members. Further, it sets forth the required curricula and materials for use in the continuing education course. This bill also provides that the board of directors of the appraisal district should select as chairman of the board, where possible, a member with a background in law and property appraisal.
- K. Property Tax Consulting Licensing** - HB 2591 seeks to regulate the growing industry of property tax consultant services by requiring the Texas Department of Licensing and Regulation to enforce more stringent guidelines for registration as a property tax consultant. The new requirements increase required classroom instruction for property tax consultant applicants from 15 hours to 40 hours, require applicants to pass an examination, prevent senior tax consultants from supervising more than 10 registered property tax consultants, and require that tax consultants act only on behalf of property owners whom they formally represent.
- L. Pollution Control Advisory Panel** - HB 3206 revises Sec. 11.31 and the implementation of a property tax exemption for pollution control property by requiring the Texas Commission on Environmental Quality to establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups to advise the committee regarding the implementation of the exemption.
- M. Administrative Appeal Pilot Program** - HB 3612 requires the State Office of Administrative Hearings (“SOAH”) to develop a pilot program under which, as an alternative to filing an appeal under Sec. 42.01, a property owner is authorized to appeal to SOAH to protest the appraised or market value of property brought under Sec. 41.41(a)(1). This right of administrative appeal will be extended to those properties whose appraised or market value is more than \$1 million. The pilot program will begin no later than January 1, 2010, and will be conducted in Bexar, Cameron, El Paso, Harris, Tarrant, and Travis Counties.

- N. Post-Protest Valuation Guidelines** - SB 771 may protect taxpayers in the year subsequent to a successful valuation protest. Currently, there is no standard for setting the property value in a year following a successful protest of market value. SB 771 provides that the chief appraiser may not increase the appraised value of the property unless the increase by the chief appraiser is reasonably supported by substantial evidence. The burden of proof to support an increase in the appraised value of property is placed on the chief appraiser.
- O. Extension of Deadlines for Redevelopment Districts** - SB 1105 was signed on May 23, 2009, and was effective immediately. Passed in response to AG Opinion No. GA-0276, which interpreted Sec. 311.017 as prohibiting the extension of the termination of an existing tax increment finance district, SB 1105 permits the City of Lubbock to extend the termination date of its reinvestment zone from 2021 to 2031 so that the plan adopted by the city in 2008 can be completed.

By June 21, 2009, practitioners will know whether these bills became effective or were vetoed. We will report significant developments in the next issue of the *State Tax Return*. Although Governor Perry may call a special session, we do not expect the legislature to consider tax matters at that time. The next regular session is scheduled to convene in 2011. In the interim, practitioners should expect further administrative guidance from the Comptroller in the form of FAQs, letter rulings, or amended regulations.



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