

(d) Except for the dealer's vessel and outboard motor inventory, personal property held by a dealer is appraised as provided by other sections of this code. In the case of a dealer whose sales from the dealer's vessel and outboard motor inventory are made predominantly to dealers, the chief appraiser shall appraise the dealer's vessel and outboard motor inventory as provided by Section 23.12 of this code.

(e) A dealer is presumed to be an owner of a dealer's vessel and outboard motor inventory on January 1 if, in the 12-month period ending on December 31 of the immediately preceding year, the dealer sold a vessel or outboard motor to a person other than a dealer. The presumption created by this subsection is not rebutted by the fact that a dealer has no vessels or outboard motors physically on hand for sale from a dealer's vessel and outboard motor inventory on January 1.

(f) The comptroller shall promulgate a form entitled "Dealer's Vessel and Outboard Motor Inventory Declaration." Except as provided by Section 23.125(l) of this code, not later than February 1 of each year or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:

- (1) the name and business address of each location at which the dealer owner conducts business;
- (2) each of the dealer's and manufacturer's numbers issued by the Parks and Wildlife Department;
- (3) a statement that the dealer owner is the owner of a dealer's vessel and outboard motor inventory; and
- (4) the market value of the dealer's vessel and outboard motor inventory for the current tax year as computed under Subsection (b) of this section.

(g) Under the terms provided by this subsection, the chief appraiser may examine the books and records of the holder of a dealer's and manufacturer's number issued by the Parks and Wildlife Department. A request made under this subsection must be made in writing, delivered personally to the custodian of the records, must provide a period not less than 15 days for the person to respond to the request, and must state that the person to whom it is addressed has the right to seek judicial relief from compliance with the request. In a request made under this section the chief appraiser may examine:

- (1) the document issued by the Parks and Wildlife Department showing the person's dealer's and manufacturer's number;
- (2) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.125 of this code to the person;
- (3) sales records to substantiate information set forth in the dealer's declaration filed by the person.

(h) If a dealer fails to file a declaration required by this section, or if, on the declaration required by this section, a dealer reports the sale of fewer than five vessels or outboard motors in the prior year, the chief appraiser shall report that fact to the Parks and Wildlife Department.

(i) A dealer who fails to file a declaration required by this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$500. Each day during which a dealer fails to comply with the terms of this subsection is a separate violation.

(j) A dealer who violates Subsection (g) of this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$500. Each day during which a dealer fails to comply with the terms of Subsection (g) of this section is a separate violation.

(k) In addition to other penalties provided by law, a dealer who fails to file or fails to timely file a declaration required by this section 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 shall collect the penalty established by this section in the name of the chief appraiser or collector. Venue of an action brought under this subsection is in the county in which the violation occurred or in the county in which the owner maintains the owner's principal place of business or residence. A penalty forfeited under this subsection is \$1,000 for each month or part of a month in which a declaration is not filed or timely filed after it is due.

HISTORY: Enacted by Acts 1995, 74th Leg., ch. 836 (H.B. 2940), § 3, effective January 1, 1996; am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997 (renumbered from Sec. 23.12D); am. Acts 1997, 75th Leg., ch. 1052 (S.B. 1153), §§ 1, 2, effective January 1, 1998; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 3, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), § 3K.06, effective September 1, 2009.

Sec. 23.1241. Dealer's Heavy Equipment Inventory; Value.

(a) In this section:

(1) "Dealer" means a person engaged in the business in this state of selling, leasing, or renting heavy equipment. The term does not include a bank, savings bank, savings and loan association, credit union, or other finance company. In addition, for purposes of taxation of a person's inventory of heavy equipment in a tax year, the term does not include a person who renders the person's inventory of heavy equipment for taxation in that tax year by filing a rendition statement or property report in accordance with Chapter 22.

(2) "Dealer's heavy equipment inventory" means all items of heavy equipment that a dealer holds for sale, lease, or rent in this state during a 12-month period.

(3) "Dealer-financed sale" means the sale at retail of an item of heavy equipment in which the dealer finances the purchase of the item, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement that evidences the sale.

(4) "Declaration" means a dealer's heavy equipment inventory declaration form adopted by the comptroller under this section.

(5) "Fleet transaction" means the sale of five or more items of heavy equipment from a dealer's heavy equipment inventory to the same person in one calendar year.

(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 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, the total amount of the lease or rental payments.

(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.

(b) For the purpose of the computation of property tax, 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.

(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.

(c) For the purpose of the computation of property tax on the market value of the dealer's heavy equipment inventory of an owner who was not a dealer on January 1 of the preceding tax year, the chief appraiser shall estimate the market value of the dealer's heavy equipment inventory. In making the estimate required by this subsection, the chief appraiser shall extrapolate using sales data, if any, generated by sales from the dealer's heavy equipment inventory in the preceding tax year.

(d) Except for dealer's heavy equipment inventory, personal property held by a dealer is appraised as provided by the other sections of this code. In the case of a dealer whose sales from the dealer's heavy equipment inventory are made predominately to other dealers, the chief appraiser shall appraise the dealer's heavy equipment inventory as provided by Section 23.12.

(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.

(f) The comptroller by rule shall adopt a dealer's heavy equipment inventory declaration form. Except as provided by Section 23.1242(k), not later than February 1 of each year, or, in the case of a dealer who was not in business on January 1, not later than 30 days after commencement of business, each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth:

(1) the name and business address of each location at which the declarant conducts business;

(2) a statement that the declarant is the owner of a dealer's heavy equipment inventory; and

(3) the market value of the declarant's heavy equipment inventory for the current tax year as computed under Subsection (b).

(g) As provided by this subsection, the chief appraiser may examine the books and records of a dealer. A request made under this subsection must be made in writing, must be delivered personally to the custodian of the records at a location at which the dealer conducts business, must provide a period of not less than 15 days for the person to respond to the request, and must state that the person to whom the request is addressed has the right to seek judicial relief from compliance with the request. In a request made under this section, the chief appraiser may examine:

(1) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.1242 to the person; and

(2) sales records to substantiate information set forth in the declaration filed by the dealer.

(h) [Repealed by Acts 1999, 76th Leg., ch. 574 (S.B. 521), § 2(1), effective June 18, 1999.]

(i) [Repealed by Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), § 8, effective January 1, 2012.]

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

HISTORY: Enacted by Acts 1997, 75th Leg., ch. 1184 (S.B. 759), § 2, effective January 1, 1998; am. Acts 1999, 76th Leg., ch. 574 (S.B. 521), § 2(1), effective June 18, 1999; am. Acts 1999, 76th Leg., ch. 1550 (S.B. 1435), §§ 1—3, effective January 1, 2000; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 4, effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 322 (H.B. 2476), §§ 1, 2, 8, effective January 1, 2012; am. Acts 2013, 83rd Leg., ch. 884 (H.B. 826), § 1, effective January 1, 2014.

Sec. 23.1242. Prepayment of Taxes by Heavy Equipment Dealers.

(a) In this section:

(1) "Aggregate tax rate" means the combined tax rates of all appropriate taxing units authorized by law to levy property taxes against a dealer's heavy equipment inventory.

(2) "Dealer's heavy equipment inventory," "declaration," "dealer," "sales price," "subsequent sale," and "total annual sales" have the meanings assigned those terms by Section 23.1241.

(3) "Statement" means the dealer's heavy equipment inventory tax statement filed on a form adopted by the comptroller under this section.

(4) "Unit property tax factor" means a number equal to one-twelfth of the preceding year's aggregate ad valorem tax rate at the location where a dealer's heavy equipment inventory is located on January 1 of the current year.

(b) Except for an item of heavy equipment sold to a dealer, an item of heavy equipment included in a fleet transaction, an item of heavy equipment that is the subject of a subsequent sale, or an item of heavy equipment that is subject to a lease or rental, an owner or a person who has agreed by contract to pay the owner's current year property taxes levied against the owner's heavy equipment inventory shall assign a unit property tax to each item of heavy equipment sold from a dealer's heavy equipment inventory. In the case of a lease or rental, the owner shall assign a unit property tax to each item of heavy equipment leased or rented. The unit property tax of each item of heavy equipment is determined by multiplying the sales price of the item or the monthly lease or rental payment received for the item, as applicable, by the unit property tax factor. If the transaction is a lease or rental, the owner shall collect the unit property tax from the lessee or renter at the time the lessee or renter submits payment for the lease or rental. The owner of the equipment shall state the amount of the unit property tax assigned as a separate line item on an invoice. On or before the 20th day of each month the owner shall, together with the statement filed by the owner as required by this section, deposit with the collector an amount equal to the total of unit property tax assigned to all items of heavy equipment sold, leased, or rented from the dealer's heavy equipment inventory in the preceding month to which a unit property tax was assigned. The money shall be deposited by the collector to the credit of the owner's escrow account for prepayment of property taxes as provided by this section. An escrow account required by this section is used to pay property taxes levied against the dealer's heavy equipment inventory, and the owner shall fund the escrow account as provided by this subsection.

(c) The collector shall maintain the escrow account for each owner in the county depository. The collector is not required to maintain a separate account in the depository for each escrow account created as provided by this section but shall maintain separate records for each owner. The collector shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Interest generated by an escrow account created as provided by this section is the sole property of the collector and that interest may not be used by an entity other than the collector. Interest generated by an escrow account may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

(d) Except as provided by Section 23.1243, the owner may not withdraw funds in an escrow account created under this section.

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

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

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

(3) the unit property tax of the item of heavy equipment, if any; and

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

(f) On or before the 20th day of each month, a dealer shall file with the collector the statement covering the sale, lease, or rental of each item of heavy equipment sold, leased, or rented by the dealer in the preceding month. On or before the 20th day of a month following a month in which a dealer does not sell, lease, or rent an item of heavy equipment, the dealer must file the statement with the collector and indicate that no sales, leases, or rentals were made in the prior month. A dealer shall file a copy of the statement with the chief appraiser and retain documentation relating to the disposition of each item of heavy equipment sold and the lease or rental of each item of heavy equipment. A chief