

**Sec. 23.12E. Prepayment of Taxes by Certain Taxpayers [Renumbered].**

Renumbered to Tex. Tax Code § 23.125 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997.

**Sec. 23.12F. Declarations and Statements Confidential [Renumbered].**

Renumbered to Tex. Tax Code § 23.126 by Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 31.01(73), effective September 1, 1997.

**Sec. 23.121. Dealer's Motor Vehicle Inventory; Value.**

(a) In this section:

(1) "Chief appraiser" means the chief appraiser for the appraisal district in which a dealer's motor vehicle inventory is located.

(2) "Collector" means the county tax assessor-collector in the county in which a dealer's motor vehicle inventory is located.

(3) "Dealer" means a person who holds a dealer's general distinguishing number issued by the Texas Department of Motor Vehicles under the authority of Chapter 503, Transportation Code, or who is legally recognized as a motor vehicle dealer pursuant to the law of another state and who complies with the terms of Section 152.063(f). The term does not include:

(A) a person who holds a manufacturer's license issued under Chapter 2301, Occupations Code;

(B) an entity that is owned or controlled by a person who holds a manufacturer's license issued under Chapter 2301, Occupations Code;

(C) a dealer whose general distinguishing number issued by the Texas Department of Motor Vehicles under the authority of Chapter 503, Transportation Code, prohibits the dealer from selling a vehicle to any person except a dealer; or

(D) a dealer who:

(i) does not sell motor vehicles described by Section 152.001(3)(A);

(ii) meets either of the following requirements:

(a) the total annual sales from the dealer's motor vehicle inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the preceding tax year are 25 percent or less of the dealer's total revenue from all sources during that period; or

(b) the dealer did not sell a motor vehicle to a person other than another dealer during the 12-month period corresponding to the preceding tax year and the dealer estimates that the dealer's total annual sales from the dealer's motor vehicle inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the current tax year will be 25 percent or less of the dealer's total revenue from all sources during that period;

(iii) not later than August 31 of the preceding tax year, filed with the chief appraiser and the collector a declaration on a form prescribed by the comptroller stating that the dealer elected not to be treated as a dealer under this section in the current tax year; and

(iv) renders the dealer's motor vehicle inventory in the current tax year by filing a rendition with the chief appraiser in the manner provided by Chapter 22.

(4) "Dealer's motor vehicle inventory" means all motor vehicles held for sale by a dealer.

(5) "Dealer-financed sale" means the sale of a motor vehicle in which the seller finances the purchase of the vehicle, is the sole lender in the transaction, and retains exclusively the right to enforce the terms of the agreement evidencing the sale.

(6) "Declaration" means the dealer's motor vehicle inventory declaration form promulgated by the comptroller as required by this section.

(7) "Fleet transaction" means the sale of five or more motor vehicles from a dealer's motor vehicle inventory to the same person within one calendar year.

(8) "Motor vehicle" means a towable recreational vehicle or a fully self-propelled vehicle with at least two wheels which has as its primary purpose the transport of a person or persons, or property, whether or not intended for use on a public street, road, or highway. The term does not include:

(A) a vehicle with respect to which the certificate of title has been surrendered in exchange for a salvage certificate in the manner provided by law; or

(B) equipment or machinery designed and intended to be used for a specific work-related purpose other than the transporting of a person or property.

(9) "Owner" means a dealer who owes current year vehicle inventory taxes levied against a dealer's motor vehicle inventory.

(10) "Person" means a natural person, corporation, partnership, or other legal entity.

(11) "Sales price" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department

of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

(12) "Subsequent sale" means a dealer-financed sale of a motor vehicle that, at the time of the sale, has been the subject of a dealer-financed sale from the same dealer's motor vehicle inventory in the same calendar year.

(13) "Total annual sales" means the total of the sales price from every sale from a dealer's motor vehicle inventory for a 12-month period.

(14) "Towable recreational vehicle" means a nonmotorized vehicle that is designed for temporary human habitation for recreational, camping, or seasonal use and:

- (A) is titled and registered with the Texas Department of Motor Vehicles through the office of the collector;
- (B) is permanently built on a single chassis;
- (C) contains one or more life support systems; and
- (D) is designed to be towable by a motor vehicle.

(a-1) A dealer who has elected to file the declaration described by Subsection (a)(3)(D)(iii) and to render the dealer's motor vehicle inventory as provided by Subsection (a)(3)(D)(iv) must continue to file the declaration and render the dealer's motor vehicle inventory so long as the dealer meets the requirements of Subsection (a)(3)(D)(ii)(a) or (b).

(b) For the purpose of the computation of property tax, the market value of a dealer's motor vehicle inventory on January 1 is the total annual sales from the dealer's motor vehicle inventory, less sales to dealers, fleet transactions, and subsequent sales, for the 12-month period corresponding to the prior tax year, divided by 12.

(c) For the purpose of the computation of property tax, the market value of the dealer's motor vehicle inventory of an owner who was not a dealer on January 1 of the prior tax year, the chief appraiser shall estimate the market value of the dealer's motor vehicle 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 motor vehicle inventory in the prior tax year.

(d) Except for dealer's motor vehicle 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 dealer's motor vehicle inventory are made predominately to dealers, the chief appraiser shall appraise the dealer's motor vehicle inventory as provided by Section 23.12 of this code.

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

(f) The comptroller shall promulgate a form entitled Dealer's Motor Vehicle Inventory Declaration. Except as provided by Section 23.122(l), 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. For purposes of this subsection, a dealer is presumed to have commenced business on the date of issuance to the dealer of a dealer's general distinguishing number as provided by Chapter 503, Transportation Code. Notwithstanding the presumption created by this subsection, a chief appraiser may, at his or her sole discretion, designate as the date on which a dealer commenced business a date other than the date of issuance to the dealer of a dealer's general distinguishing number. 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 general distinguishing numbers issued by the Texas Department of Motor Vehicles;
- (3) a statement that the dealer owner is the owner of a dealer's motor vehicle inventory; and
- (4) the market value of the dealer's motor vehicle inventory for the current tax year as computed under Section 23.121(b).

(g) Under the terms provided by this subsection, the chief appraiser may examine the books and records of the holder of a general distinguishing number issued by the Texas Department of Motor Vehicles. A request made under this subsection must be made in writing, delivered personally to the custodian of the records, at the location for which the general distinguishing number has been issued, 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 Texas Department of Motor Vehicles showing the person's general distinguishing number;
- (2) documentation appropriate to allow the chief appraiser to ascertain the applicability of this section and Section 23.122 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 as required by this section, or if, on the declaration required by this section, a dealer reports the sale of fewer than five motor vehicles in the prior year, the chief appraiser shall report that fact to the Texas Department of Motor Vehicles and the department shall initiate termination proceedings. The chief appraiser shall include with the report a copy of a declaration, if any, indicating the sale by a dealer of fewer than five motor vehicles in the prior year. A report by a chief appraiser to the Texas Department of Motor Vehicles as provided by this subsection is prima facie grounds for the cancellation of the dealer's general distinguishing number under Section

503.038(a)(9), Transportation Code, or for refusal by the Texas Department of Motor Vehicles to renew the dealer's general distinguishing number.

(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 person 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, county attorney, chief appraiser, or person designated by the chief appraiser shall collect the penalty established by this section in the name of the chief appraiser. 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 1993, 73rd Leg., ch. 672 (S.B. 878), § 3, effective January 1, 1993; am. Acts 1995, 74th Leg., ch. 76 (S.B. 959), § 17.01(46), effective September 1, 1995 (renumbered from § 23.12A); am. Acts 1995, 74th Leg., ch. 945 (H.B. 2624), § 2, effective January 1, 1996 (renumbered from § 23.12A); am. Acts 1997, 75th Leg., ch. 165 (S.B. 898), § 30.249, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 321 (H.B. 2116), §§ 1–3, effective May 26, 1997; am. Acts 1999, 76th Leg., ch. 1038 (H.B. 3033), § 1, effective June 18, 1999; am. Acts 2009, 81st Leg., ch. 116 (H.B. 2071), § 1, effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 933 (H.B. 3097), §§ 3K.03, 3K.04, effective September 1, 2009; am. Acts 2013, 83rd Leg., ch. 850 (H.B. 315), §§ 1, 2, effective January 1, 2014.

## NOTES TO DECISIONS

### Analysis

#### Contracts Law

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#### Tax Law

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## CONTRACTS LAW

### Types of Contracts

**Installation Contracts.** — In a case arising from the sale of a new sport utility vehicle, summary judgment was properly granted to a seller because there was no violation of the Texas Finance Code where the seller included an inventory sales tax under Tex. Fin. Code Ann. § 348.005(2) in an installment contract with a caption marking it as a dealer's inventory tax; the action taken complied with an interpretation given by the Texas Consumer Credit Commissioner. *DiBello v. Charlie Thomas Ford, Ltd.*, 288 S.W.3d 118, 2009 Tex. App. LEXIS 1479 (Tex. App. Houston 1st Dist. Mar. 5, 2009), reh'g denied, No. 01-08-00549-CV, 2009 Tex. App. LEXIS 6407 (Tex. App. Houston 1st Dist. Apr. 23, 2009).

## TAX LAW

### State & Local Taxes

#### Administration & Proceedings

**Assessments.** — Tex. Tax Code Ann. § 23.121 was constitutional under Tex. Const. art. VIII, § 1, as applied because the sales-based approach captured the value of inventory over time and taxes were paid on inventory actually sold. *Expo Motorcars, L.L.C. v. Harris County Appraisal Dist.*, No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

**TAXPAYER PROTESTS.** — Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on

sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales in the later calendar year were irrelevant to the dealer's protest and the dealer could have timely protested the valuation under Tex. Tax Code Ann. §§ 41.41 and 41.44. *Expo Motorcars, L.L.C. v. Harris County Appraisal Dist.*, No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

## PERSONAL PROPERTY TAX

### Tangible Property

**General Overview.** — In a case arising from the sale of a new sport utility vehicle, summary judgment was properly granted to a seller because there was no violation of the Texas Finance Code where the seller included an inventory sales tax under Tex. Fin. Code Ann. § 348.005(2) in an installment contract with a caption marking it as a dealer's inventory tax; the action taken complied with an interpretation given by the Texas Consumer Credit Commissioner. *DiBello v. Charlie Thomas Ford, Ltd.*, 288 S.W.3d 118, 2009 Tex. App. LEXIS 1479 (Tex. App. Houston 1st Dist. Mar. 5, 2009), reh'g denied, No. 01-08-00549-CV, 2009 Tex. App. LEXIS 6407 (Tex. App. Houston 1st Dist. Apr. 23, 2009).

Where a marketing agent for a fire truck manufacturer obtained bare legal title to the trucks from the manufacturer, immediately transferred title to in-state purchasers of fire trucks to accommodate agency regulations, and received only a commission on the sales, the marketing agent was merely a conduit between the real seller and the purchasers and was not subject to an assessment of personal property ad valorem taxes because the marketing agent did not sell motor vehicle inventory. *Martin v. Harris County Appraisal Dist. & Harris County Appraisal Review Bd.*, 44 S.W.3d 190, 2001 Tex. App. LEXIS 1851 (Tex. App. Houston 14th Dist. Mar. 22, 2001, no pet.).

**IMPOSITION OF TAX.** — Tex. Tax Code Ann. § 23.121 was constitutional under Tex. Const. art. VIII, § 1, as applied because the sales-based approach captured the value of inventory over time and taxes were paid on inventory actually sold. *Expo Motorcars, L.L.C. v. Harris County Appraisal Dist.*, No. 01-08-00473-CV, 2009 Tex. App. LEXIS 5738 (Tex. App. Houston 1st Dist. July 23, 2009).

Motor vehicle dealer was not denied due process under Tex. Const. art. I, §§ 19, 27 because the actual market value of its inventory for a given year was not based on the dealer's actual sales in that calendar year but was the actual market value of inventory as of January 1 based on sales in the previous calendar year under Tex. Tax. Code Ann. § 23.121. Thus, the actual sales