

## ***Legislative Changes Affecting Business Entities***

July 13, 2011 Webcast  
State Bar of Texas

The 82<sup>nd</sup> Texas Legislative Session and the Special Session convened during June of 2011 did not generate any new material Texas taxes. There are, however, several important administrative and timing provisions<sup>1</sup> that business law practitioners and tax law practitioners should be aware of.

### ***General Administrative Provisions***

#### *Record Retention*

Article 4 of Senate Bill 1 from the Special Session<sup>2</sup> (hereafter “SB1”), amends the Occupations Code and the Tax Code to extend the amount of time that taxpayers must keep records including electronically stored documents. Section 111.0041 of the Tax Code is amended to extend the time to at least four years that taxpayers are required to maintain records to substantiate and verify a claim regarding taxes, penalties, and interest. Longer holding periods are required if administrative or judicial proceedings involving the records are pending.

#### *Late Filing Penalty*

Article 14 of SB1 adds a \$50 late filing penalty for a person who fails to file a reports required under Texas Tax Code Chapter 151 (*sales tax*); Chapter 152 (*motor vehicle tax*); 156 (*hotel occupancy tax*); 162 (*motor fuels tax*); 171 (*franchise tax*); or Chapter 183 (*mixed beverage tax*). The penalty is in addition to any other penalty and without regard to whether the taxpayer subsequently files the report or whether any taxes or fees were due. The article takes effect October 1, 2011.

#### *Enhanced Enforcement*

Senate Bill 934<sup>3</sup> passed during the 82<sup>nd</sup> Session expands the Texas Comptroller’s ability to investigate and prosecute tax fraud. It increases criminal penalties for certain fraudulent sales tax nonpayment and concealing resale certificate information. For example, under the new law it is a first degree felony to collect and fail to remit sales tax in excess of \$200,000.<sup>4</sup> It also adds money laundering and organized criminal activities to existing tax fraud violations in the Texas Code of Criminal Procedure. The new law also tolls the limitations period during any criminal proceeding.

---

<sup>1</sup> There are other changes to the Texas Tax Code that are not included in this outline due to their application to a more limited scope of taxpayer.

<sup>2</sup> <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=821&Bill=SB1>

<sup>3</sup> <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=SB934>

<sup>4</sup> Tex. Tax Code Section 151.7032 (b)(7).

### ***Tax Speed Up Provisions***

SB1 requires certain taxes that are collected from customers and that would otherwise be payable to the State in September of 2013 (i.e., the first month of next biennium) to have to be paid in August of 2013 (i.e., the last month of this biennium).

Article 9 of SB1 requires a prepayment of 25% *motor fuel* taxes otherwise payable in September 2013.

Article 10 of SB1 requires a prepayment of 25% certain *alcoholic beverage taxes* otherwise payable in September 2013.

Article 13 of SB1 requires monthly electronic *sales tax*-filers to pay 125% of their August 2013 return amount by August 30, 2013, and allows a credit for the 25% prepayment in the following monthly return.

### ***Franchise Tax***

Article 37 of SB1 extends the small business franchise tax threshold amount of \$1,000,000 through 2012 and 2013.

Effective January 1, 2012, Article 45 of SB1 exempts political action committees from the franchise tax. Article 45 also adds limited franchise tax revenue exclusions for certain “live event promotion companies” and “courier services.”

Article 51 of SB1 amends the definition of “retail trade” that can qualify for the lower .5% franchise tax rate to include certain apparel rental businesses. The provision takes effect on January 1, 2012.

### ***Sales Tax***

#### *Nexus*

Article 30 of SB1 amends Texas Tax Code Section 151.008(b) to provide that the terms “seller” and “retailer” include a person who by agreement with an owner of tangible personal property has been entrusted with possession of and authority to sell, lease, or rent the property without additional action on the part of the owner.

Article 30 also amends Texas Tax Code Section 151.107 to provide that a “retailer engaged in business in this state” includes a retailer that (1) holds a substantial ownership (i.e. at least 50% direct or indirect) in a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; *or* (2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse, or similar location in this state that delivers property sold by the retailer.

House Bill 1841 from the 82<sup>nd</sup> Session<sup>5</sup> adds a new Section 151.108 to the Texas Tax Code that provides that a person is not engaged in business in Texas for state tax nexus purposes if its only in-state activity is the use of an “Internet hosting” service.

### *Sale for Resale*

Article 12 of SB1 amends Section 151.006 of the Texas Tax Code to more clearly prevent taxpayers that are providing nontaxable services from buying property or services associated with their services in exempt “sale[s] for resale.” Certain exceptions are made for purchases made by federal government contractors. The intent of the new provision is that a nontaxable service provider can only purchase items or services under the resale exemption if they actually sell such items or services in a taxable transaction to their customers.

### ***Property Tax***

Senate Bill 1505 from the 82<sup>nd</sup> Session amends Section 23.175 of the Texas Property Tax Code to require Chief Appraisers to adjust the oil and gas price used to value mineral interests for the current appraisal year using a price forecast by the U.S. Energy Information Association and limits annual increases or decreases to the average annual percentage change in the Producer Price Index published the by the Bureau of Labor and Statistics from 1982 to current.

---

<sup>5</sup> <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB1841>