

SUBJECT: Expenditure of interest on motor-vehicle inventory tax escrow accounts

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Oliveira, Hartnett, Bonnen, Y. Davis, Keffer, Ramsay, Ritter
0 nays
4 absent — McCall, Craddick, Heflin, Hilbert

WITNESSES: For — Donald Lee, Texas Conference of Urban Counties; Jim Allison, County Judges and Commissioners Association of Texas; Jim Lewis, McLennan County

Against — (*On original version:*) Kristeen Roe and Gerald “Buddy” Winn, Tax Assessor-Collectors Association of Texas

On — (*On committee substitute:*) Kristeen Roe and Gerald “Buddy” Winn, Tax Assessor-Collectors Association of Texas

BACKGROUND: Property-tax appraisers formerly assessed taxable value on automobile dealers in part on their inventories as of January 1 of each tax year. In 1995, the 74th Legislature mandated a prepayment procedure (Tax Code, sec. 23.122) under which dealers include the tax in the sales price of each vehicle sold, charge it to their customers and, at month’s end, report their sales and remit the taxes received to their local tax assessor-collectors (TACs). Boat, mobile home, and heavy vehicle and equipment dealers also may follow this procedure. The TACs deposit the payments in escrow accounts and apply the balances to the dealers’ property taxes, even if they do not collect property taxes otherwise. TACs may spend the interest earned to defray their administrative costs.

DIGEST: CSHB 3049 would qualify how TACs may spend the interest on prepaid taxes deposited into motor-vehicle inventory tax escrow accounts. Such interest could not be used to supplement TACs’ salaries or to defray any personal expenses.

At least 60 days before the beginning of counties' fiscal years, TACs would have to submit budgets of these interest expenditures to the counties' budget officers. Escrow account interest could be spent only according to these budgets in compliance with competitive bidding and proposal procedures under the County Purchasing Act (Local Government Code, chapter 262, subchapter C). County budget officers would have to make the budgets available to the public. The budgets could be discussed during the county budgeting process but would not be subject to commissioners' approval.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Over the past six years, unclear statutory language, combined with a series of attorney general opinions, has led to ambiguity about how TACs may spend interest earned on the motor-vehicle inventory property tax escrow accounts they maintain. CSHB 3049 would clarify that the interest could not be spent on TAC salaries or personal expenses.

The Legislature allowed TACs to keep the interest to defray their costs of collecting, maintaining, and remitting automobile dealers' prepaid property taxes. The interest should not be used for other purposes, certainly not for the TACs' personal benefit, despite the attorney general's ruling to that effect in Opinion JC-0348 (February 22, 2001). Some TACs have bought vehicles, even hogs, with this interest, items that clearly are unrelated to the accounts' administration. CSHB 3049 would eliminate these kinds of abuses.

These funds are not subject to county commissioners' approval, although they are subject to county audit. Furthermore, counties may not use the interest, nor may they recapture general expenditures from it. It would be appropriate for legislators to exercise some control over how money they have allocated is spent.

The vast majority of TACs are reputable professionals and ethical public servants. This bill would affect only those who might seek to misuse these funds.

OPPONENTS
SAY:

In seeking to clarify the law on this matter, CSHB 3049 could create more definitional problems than it solves. It might jeopardize a funded mandate that reduces county costs of tax collection and keeps the burden off taxpayers. In large urban counties, the overhead is significant.

Rather than specifying what is permissible, the bill simply would prohibit personal expenses. This could be construed to exclude valid expenditures incurred by a TAC, such as continuing professional education courses or seminars on how to handle such escrow accounts. In small counties where TACs handle the accounts themselves, these would be legitimate, even necessary, expenses.

This bill represents a legislative overreaction to a relatively small problem. The basis of the most recent — and surprising — attorney general’s opinion was a lone, retired tax assessor-collector who performed all the pertinent escrow account work herself. Although TACs do not advocate salary supplements from interest on these accounts, some “horror stories” about alleged abuses are exaggerated at best.

This bill would add unnecessary restrictions. Most TACs already disclose how they spend this interest. Actions by TACs are subject to judicial review, and the Board of Tax Professional Examiners can respond to complaints by withdrawing certification or removing the TAC from office.

NOTES:

HB 3049 as filed would not have required TACs to submit budgets for escrow account interest expenditures, nor would it have limited spending to those budgets according to the County Purchasing Act.