

- SUBJECT:** Modifying taxes on certain off-road vehicles
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 9 ayes — Phillips, Darby, Bonnen, Y. Davis, Fletcher, Harper-Brown, Lavender, McClendon, Rodriguez
- 0 nays
- 2 absent — Martinez, Pickett
- WITNESSES:** For — Mark Lamb and Royce Poinsett, Texas Motorcycle Dealers Association (*Registered, but did not testify*); Norman Garza, Texas Farm Bureau; Michael Marks, Texas Motorcycle Dealers Association; Laura Matz, Texas Self Storage Association)
- Against — Terri Hall, Texas TURF, Texans for Accountable Government, Central Texas Republican Liberty Caucus
- BACKGROUND:** Tax Code, ch. 152 establishes taxes on the sale, rental, and use of motor vehicles. Sec. 152.091 exempts from the taxes farm machines, trailers, or semitrailers used primarily for farming, ranching, and timber operations.
- Tax Code, ch. 151 establishes limited sales, use, and excise taxes. Sec. 501.308(5) exempts from these taxes motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Tax Code, ch. 152. Sec. 151.316 exempts from the taxes machinery and equipment exclusively used or employed on a farm or ranch for a variety of purposes.
- DIGEST:** CSHB 2237 would add off-road vehicles to provisions establishing the state motor fuels tax under Tax Code, ch. 152. The bill would define “off-road vehicle” as an all-terrain vehicle or a recreational off-highway vehicle designed primarily for farming or a motorcycle designed for off-highway use. Off-road vehicles used primarily for purposes of farming or for timber operations would be exempted from the motor vehicle sales tax.
- CSHB 2237 would prohibit a person who purchased or otherwise acquired an off-road vehicle that was not required to be registered from operating the vehicle before obtaining a certificate of title for the vehicle. The bill

would exempt from this requirement an off-road vehicle exempted from motor vehicle sales and use tax or that was acquired and sold or disposed of by a lienholder exercising a statutory or contractual lien right.

The bill would take effect September 1, 2011. It would apply only to a purchase on or after its effective date and would not affect any tax liability that previously was accrued.

**SUPPORTERS
SAY:**

CSHB 2237 would help address unfair practices that take off-road vehicle sales away from Texas dealers, especially those near borders of other states. The bill would do this by moving sales of certain off-road vehicles from the general sales tax to the motor vehicle sales tax and by requiring that these vehicles be titled in Texas. Making this change would bring taxes for dirt bikes and other off-road vehicles in line with taxes for motor vehicles and street bikes.

The bill would address a loophole that has allowed vehicle dealers in Oklahoma and other neighboring states to peel sales away from Texas dealers. Dealers in some neighboring states may waive sales taxes on off-road vehicles if the buyer signs an affidavit agreeing not to operate the vehicle within that state. This windfall does not work in reverse, as there is no similar allowance in Texas. Since there is no registration or titling requirement for these vehicles under current law, a buyer can drive to Oklahoma or another state, purchase an off-road vehicle, and then drive back without ever paying sales taxes to the state of Texas. Dealers in neighboring states have identified this loophole and turned it into a successful marketing strategy, stripping business away from their Texas counterparts.

CSHB 2237 would fix this loophole by requiring all off-road vehicles operating in the state to have a valid certificate of title. Dealers currently issue titles for new sales of off-road vehicles, since a title almost always is required by insurance companies and for financing purposes. When buyers went to obtain a title for a newly purchased off-road vehicle, they would have to pay the state motor vehicles sales tax to the county assessor-collector. The release of title is the point of collection for the motor vehicle sales tax, whereas the general state sales tax is collected by the dealer who then sends it to the comptroller.

Making this modification would effectively curb current abuses, since off-road vehicles sold in other states like Oklahoma no longer could evade

taxes at the point of sale. This would have twin benefits for the state. First, it would provide an economic boost by restoring retail sales that take place in Texas. Second, it would enhance motor vehicles sales tax collections — which are transferred to general revenue — for sales that currently are taking place out of state and therefore of no economic or fiscal benefit to Texas. The state also would benefit from enhanced collections of certificate of title fees for buyers who would not otherwise have titled their vehicles in Texas.

The bill would preserve current sales tax exemptions for vehicles used for farm and timber purposes. It would make conforming changes to move off-road vehicles used for farm and timber work from the general sales tax, where they are currently exempted, to the motor vehicle sales tax, where their exemption would continue. Off-road vehicles would be subject to the same standards of “primarily” being used for farm work that applied to other farm equipment currently exempted under the motor vehicles sales tax.

The bill also would not require registration of off-road vehicles and would grandfather titling requirements for existing owners of off-road vehicles, unless the owner decided to sell.

**OPPONENTS
SAY:**

CSHB 2237 would have a negative fiscal impact on local governments that already are strapped due to austere financial and economic conditions. The bill would change the tax structure governing off-road vehicles from the general state sales tax to the motor vehicle sales tax. The rate of both of these taxes is set at 6.25 percent. The general state sales tax, however, includes an additional local sales tax option of up to 2 percent that cannot be assessed as part of the motor vehicle sales tax. As such, municipalities, counties, and transit authorities would lose out on the local sales tax revenue from these sales.

Losses from the 2 percent sales tax on off-road vehicles are hard to calculate, but could be significant. Sale prices for dirt bikes and other off-road vehicles can easily exceed \$5,000. Losses of 2 percent on these sales for local governments could have a sizeable impact, especially when many local budgets are already falling woefully short.

CSHB 2237 also would move the exemption for off-road vehicles used in farming from the general state sales tax to the motor vehicle sales tax. Current requirements for qualifying for the farm exemption under those

taxes, however, are different. Under current law, an exemption for off-road vehicles for farm work may be granted only if the vehicle is “exclusively” used on a farm. Under the bill, the exemption would be granted to off-road vehicles that were used “primarily” for farming and ranching. The bill would broaden the exemption for off-road vehicles from those used only for farm work to those used mainly for farm work. Expanding the exemption could also have a negative fiscal impact.

In addition, the bill would establish a requirement for titling off-road vehicles that would have no enforcement mechanism after the vehicle left the original dealership. While current practices would ensure a title was issued upon initial purchase, it would be difficult to enforce the conveyance of title and therefore the payment of motor vehicle sales taxes beyond the initial sale. The titling requirement also would give rise to other uncertainties. For instance, it would not be clear whether off-road vehicle operators needed to keep a title in their possession to show proof of title while operating the vehicle. If not, then there would be no easy way to verify whether a title was legitimately held on a particular off-road vehicle.

NOTES:

The Legislative Budget Board (LBB) estimates that the bill could have an indeterminate revenue impact to the state, depending on the number of off-road vehicle sold. The fiscal note says that the bill would result in a loss of revenue to any local entity with a local sales tax option, but that this impact cannot be determined.

The companion bill, SB 1280 by Estes, was left pending in the Senate Transportation and Homeland Security Committee after a public hearing on April 11.