



# TTARA

Texas Taxpayers and Research Association

July 2011

## Tax Wrap-Up for the 82<sup>nd</sup>

This second in a series of three newsletters covering the decisions made by the 82<sup>nd</sup> Texas Legislature outlines the key changes made in tax law. The first newsletter reviewed the changes made in school finance legislation. The third will provide an overview of the state budget.

While the battle cry of the 82<sup>nd</sup> Regular Session of the Texas Legislature was “No New Taxes,” a substantial number of adopted changes will impact how current taxes are administered, applied, and adjudicated. And while a number of key proposals failed, they may provide an interesting peek at what lawmakers may consider in 2013 when they next meet in regular session.

This newsletter reviews the key changes in tax law and looks ahead to potential issues that may be considered next session. All of the references to specific legislation refer to action taken in the regular session except for SB 1, which passed in the special session. For convenience of reference, this newsletter is organized in outline form:

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### I. Property Tax

Following an active legislative session two years

ago, many thought that the 82<sup>nd</sup> Legislature would take a “go slow” approach to further property tax changes in 2011. After all, in 2009 the Legislature put a constitutional amendment on the ballot authorizing direct state oversight of the property tax system (it passed), overhauled the Comptroller’s school property value study to emphasize appraisal district operations and efficiency, created a pilot program allowing taxpayers to appeal to the State Office of Administrative Hearings (SOAH), and tweaked the rules governing commercial property appraisals. It also created a permanent advisory committee to assist the TCEQ in administering the pollution control certification process and substantially reformed the Chapter 313 tax limitation program. The Legislature might be forgiven for letting the system adjust to these changes before considering substantial changes.

This did not turn out to be the case as almost 300 property tax bills were introduced in the regular session. In almost every area of property tax administration the Legislature seriously considered making fundamental changes in the system created by the 1979 Peveto bill.<sup>1</sup> While many of these proposals did not ultimately pass, they demonstrated once again that although the property tax is local, the Legislature considers

<sup>1</sup> The legislation authored by then-Rep. Wayne Peveto replaced an inconsistently-administered property tax system with one with a consistently-defined tax base, uniform standards of appraisal, and professional administration.

the policy—and politics—of the tax a top priority every time it meets. Fortunately, most bills that did pass reinforced the best aspects of the current system. Well-reasoned reforms enhanced the independence and professionalism of the appraisal process, made tax administration and the appeals process fairer, and prevented further erosion of residential values at the expense of business property. More extreme proposals fell by the wayside.

Before considering possible issues for the future, this review will consider property tax issues in key policy categories: A) independence, professionalism, and transparency; B) tax administration and appeals; and C) equality and uniformity.

#### **A. Independence, Professionalism, and Transparency**

One of TTARA's primary policy objectives each session is to preserve the heart of the 1979 Peveto reforms: the creation of an independent and professional appraisal process separate and distinct from the levying, assessment, and collection of the tax. This principle came under intense scrutiny this session. Legislators filed numerous bills changing the method of selection of appraisal district boards and chief appraisers in an effort to make those who oversee and perform appraisal functions directly accountable to voters. The most common approach in these bills was to require the popular election of some or all members of the appraisal district board of directors, as well as the chief appraiser. TTARA vigorously (and repeatedly) opposed these proposals on the basis that they politicize the appraisal process to its detriment.

The primary functions of the appraisal district board are to hire a chief appraiser, appoint members of their appraisal review board (ARB), and adopt a budget for district operations. The sole charge of the chief appraiser is to appraise

taxable property in the appraisal district at market value in accordance with the constitutional "equal and uniform" standard and statutory requirements. Budgeting for local government and setting tax rates, on the other hand, is the job of elected taxing unit governing boards. TTARA has long argued that these functions must be kept strictly separate, and that the direct popular election of appraisal officials would favor property owners who vote—as it clearly did in the pre-Peveto era when local elected officials were responsible for property appraisals and typically valued residential property, in contrast to business property, at a fraction of its full market value. Fortunately, the clear line between professionalism and politics remains in place. One change, however, that may improve the operation of appraisal district boards did pass: **HB 2387 by Rep. Jose Menendez** (D-San Antonio) allows the board to employ its own general counsel rather than rely on the chief appraiser for legal advice.

TTARA believes that a much better approach to making local governments accountable to their voters is to enhance transparency in local government budgeting and the setting of tax rates. TTARA strongly supported **HB 874 by Rep. Charlie Howard** (R-Sugarland) and **SB 1771 by Sen. Tommy Williams** (R-The Woodlands) that would have dramatically simplified the notice that local taxing units provide to taxpayers regarding proposed tax rates. Under current law, taxing units are required to publish a complex notice in the newspaper explaining in great detail the calculation of the unit's effective and rollback tax rates. The current notice provides virtually no usable information to a taxpayer, no meaningful comparison of the taxpayer's liability under the new rate and last year's rate, and no explanation of how the new rate relates to a change in last year's level of funding. Rep. Howard's and Sen. Williams' legislation would have improved transparency by requiring a tax

rate notice to include only three numbers: the current rate, the proposed tax rate, and the rate necessary to continue to provide the current level of services in the taxing unit. Taxpayers would then have the information needed to determine the impact of the new rate on their own tax bill and how that relates to the spending desires of their local taxing units. As they have in the past, Texas counties vehemently opposed the simplified tax rate notice, and these bills failed to advance beyond the committee stage. TTARA will continue to pursue this legislation in the future.

## B. Tax Administration and Appeals

The 82<sup>nd</sup> Legislature made significant positive changes in property tax administration and appeals, primarily in three pieces of legislation: **HB 1887 and HB 533 by Rep. Mike Villarreal** (D-San Antonio) and **HB 2203 by Rep. John Otto** (R-Dayton). A few additional single issue bills also passed. While many of these new provisions are of a technical nature and will not be reviewed in detail here, they can be summarily described as follows:

### 1. Appraisal Review Boards

**HB 1887** seeks to insulate the ARB from improper influence by the chief appraiser, appraisal office, and/or appraisal district board. The bill enhances the independence of the ARB by barring *ex parte* communications, allowing the ARB to hire independent valuation experts and legal counsel, and by requiring independent training of ARB members. **HB 896 by Rep. Charlie Howard** (R-Sugarland) allows an appraisal district board to provide for the appointment of auxiliary ARB members to assist in hearing appeals.

### 2. Protests and Appeals

**HB 1887** bars the dismissal of a protest or appeal based on minor errors in the identification of the

property owner, requires a court to order mediation if requested by either party, clarifies that a taxpayer may offer qualified expert testimony at a trial involving utility and industrial property, and allows a taxpayer to pay the amount of taxes not in dispute in order to preserve a motion to correct an error in the appraisal roll. **HB 533** establishes a formal protest and appeal procedure for rendition penalties. **HB 2203** extends the current SOAH property tax appeal pilot program (created in 2009) for another two years, adds several counties (Collin, Denton, Fort Bend, Montgomery, and Nueces) to the program, and allows the award of attorney's fees.

Two other bills, **SB 1441 by Sen. Rodney Ellis** (D-Houston) and **SB 1404 by Sen. Juan Hinojosa** (D-McAllen), make it easier to correct an error in the appraisal roll. **SB 1441** allows an ARB to make a correction relating to ownership of property for any of the five preceding years; **SB 1404** extends the time for filing suit to compel the ARB to correct the roll from 45 to 60 days.

With respect to the use of comparable sales data at a protest hearing, current law allows a property owner or its agent in counties of 20,000 or more to discover real property sales information that the chief appraiser takes into consideration but does not plan to introduce at a protest hearing, as well as other relevant comparable sales data in the possession of the chief appraiser. **SB 1130 by Sen. Glenn Hegar** (R-Katy) increases the county population threshold from 20,000 to 50,000.

### 3. Property Tax Administration

**HB 3216 by Rep. Otto** expands the use of electronic communication of notices, renditions, application forms, or completed applications between the chief appraiser, appraisal district, ARB, property owner, and the owner's agent if

agreed to by the chief appraiser and the property owner. It also allows a property owner to file a suit to compel the chief appraiser in a county with more than 200,000 in population to communicate electronically with the taxpayer.

Another important measure, **HB 1090 by Rep. Naomi Gonzalez** (D-El Paso), modifies the interest rate payable on a tax refund resulting from a district court determination. The current 8% rate is changed to the prime rate plus 2%, up to a ceiling of 8%. While this change better reflects market rates of interest, current law remains heavily weighted in favor of taxing entities. If a taxpayer loses a court decision and has not paid the amount at issue, they are subject to a six percent penalty plus interest of 1 percent monthly—a far more punitive provision that bears no relation to market interest rates.

**SB 551 by Sen. Tommy Williams** (R-The Woodlands) provides that interest does not accrue on back taxes on omitted property if the property is an improvement for which the appraisal district had actual or constructive notice (as evidenced by the filing of a building permit), the property owner pays the back taxes in full within 120 days of notice, and the land on which the improvement is located did not escape taxation in the tax year(s) at issue.

### C. Equality and Uniformity

TTARA has long maintained that the greatest strength of the Texas property tax system compared to other states is the constitutional equal and uniform requirement. Though exemptions and special valuation methodologies may be constitutionally and statutorily authorized, the Texas Constitution prohibits assessment ratios and other methods of splitting the tax roll between residential and business property. All taxpayers—business and homeowners alike—have an equal stake in ensuring that local governments are fiscally responsible in their taxing decisions.

The most daunting challenge in recent years has been mounting political pressure to split the tax roll further by reducing the current 10% appraisal cap for residential property. Numerous proposals to reduce the cap to 3% or another lower level were filed this session. None of these proposals advanced beyond the committee stage, thanks to the united opposition by TTARA and other business groups, as well as organizations representing local governments.

Moreover, proposals that would have substantially increased the homestead exemption did not advance this session, although a constitutional amendment extending the homestead exemption for a 100% disabled veteran to the veteran's surviving spouse passed and will be on the ballot this November. **SJR 14 by Sen. Leticia Van de Putte** (D-San Antonio), if adopted by the voters, and **SB 516 by Sen. Dan Patrick** (R-Houston), will allow the surviving spouse of a 100% disabled veteran to continue to claim the same homestead exemption (currently the home's total value is exempt). It also makes the exemption portable if the surviving spouse changes homesteads. **SB 201 by Sen. Carlos Uresti** (D-San Antonio) further allows a 100% disabled veteran to qualify for the exemption after January 1 and to receive a prorated reduction of taxes. **SB 540, also by Sen. Van de Putte**, directs the Comptroller to study the fiscal impact of the homestead exemption for disabled veterans and surviving spouses and report to the 2013 Legislature.

Voters will also be asked to approve an expansion of open-space valuation for land devoted to water stewardship purposes as provided in **SJR 16 by Sen. Craig Estes** (R-Wichita Falls). This is the only new property tax exemption that passed this session.

With respect to existing exemptions, **HB 2280 by Rep. Craig Eiland** (D-Galveston) tweaks the membership of the TCEQ permanent advisory

committee on pollution control property to include a representative of a school district or junior college district. A part of **SB 1 by Sen. Robert Duncan** (R-Lubbock) adopted in the special session makes a number of adjustments to the goods-in-transit exemption as it relates to public warehouses. Another provision adds bee-keeping to the list of qualified uses of property for agricultural valuation purposes.

Special valuation methodologies changed in two respects. **HB 2476 by Rep. Patricia Harless** (R-Spring) extends the method for valuing a dealer's heavy equipment inventory to equipment rented or leased, as well as equipment sold at retail. **HB 3727 by Rep. Harvey Hilderbran** (R-Kerrville) establishes a special valuation method for certain aircraft located temporarily in Texas for manufacture or assembly—a new provision with very positive economic development implications. Qualifying aircraft will be valued at 10% of its list price when completed.

#### **D. What Lies Ahead: Split Roll, State Property Tax, or Both?**

The sheer volume of property tax legislation introduced each session continues to increase, and even more activity is expected in 2013. Continuing friction between taxpayers and appraisal districts over property values, coupled with likely property tax increases by school districts, cities, counties, and a proliferating number of special taxing districts, will motivate legislators to seek changes perceived to offer relief, primarily to homeowners. Lowering the appraisal cap on homestead property and/or increasing the homestead exemption are perennial legislative issues. Renewed efforts to institute direct elections of appraisal officials are likely. Moreover, the impending budget challenges for 2014-2015 could be at least as severe as this session's, raising the specter of an intensive review of property tax exemptions and special valuation methods, particularly those that affect businesses.

At the systematic level, the ongoing school finance debate will generate discussion, particularly on the Senate side, of a state property tax for financing public education—a politically dicey proposition at best. One proposal floated earlier this year would have coupled a statewide tax with lower appraisal caps on homestead property as a “sweetener” to voters. Other schemes might include a direct “split roll” in which business properties are taxed at a higher rate. The result of either approach shifts more of the burden of the tax onto business property by taxing it at effectively higher rates than residential property. The precarious legal status of the current school finance system (litigation challenging its constitutionality could be filed as early as this year) increases the probability of a serious debate about some type of state property tax.

TTARA and its members have faced many of these issues in the past, but not in the context of the severe budget pressure at current and (likely) future levels. Nevertheless, TTARA's policy objectives remain the same: preservation of a unified property tax system that treats all categories of property in an equal and uniform manner, taxes all property at the same rate, and retains an independent and professional appraisal function. TTARA also believes that given clear and understandable information about the level of taxation, taxpayers will be more empowered to hold their local governments accountable for the spending decisions they make.

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*If you want more information about property taxes in Texas, contact TTARA's George Christian at [gchristian@ttara.org](mailto:gchristian@ttara.org) or John Kennedy at [jkennedy@ttara.org](mailto:jkennedy@ttara.org). Either may be reached at (512) 472-8838.*

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## **II. Franchise Tax**

While Texas has levied a corporate franchise tax since 1907, the reforms of 2006 that revamped

the old profits-based tax into one based on “taxable margin” continue to dominate all considerations of the tax.

Still, for what amounts to a controversial tax, few changes actually passed, and those that did were very narrow in their application.

### A. Legislative Changes

**HB2383 by Geren** (R-River Oaks) requires the Legislative Budget Board to do a study concerning the re-institution of the franchise tax incentive for research and development activity. This credit was in prior law, but was repealed when the margin tax took effect in 2008.

A provision within the special session’s **SB 1** extended the \$1 million small business exemption through 2013. The exemption was slated to drop to \$600,000 at the end of this year. The provision had a \$150 million price tag and even though money was tight this session, lawmakers gave it a high priority. Concert promoters and qualified couriers also got a break from an **SB 1** provision that will allow them to exclude from their total revenue any payments made to performing artists or subcontractors, respectively. Another provision provides that businesses primarily engaging in apparel rental will be treated as retailers and taxed at the 0.5 percent tax rate, instead of being treated as a service company and taxed at 1.0 percent.

Among the session’s casualties was a proposal to require larger franchise taxpayers to make a prepayment of their 2014 liability. The proposal was discussed, but discarded.

### B. What Lies Ahead

The margins tax has been criticized by a number of taxpayers and industries for its complexity, its unequal application across certain industries, and its lack of sensitivity to profits. At one point in

the session, Senate Finance Committee Chairman Steve Ogden introduced legislation, **SJR 52**, which would actually have imposed a constitutional prohibition on the imposition of margin tax (along with clarifying that a tax on partnerships is not prohibited under the Texas Constitution’s “Bullock Amendment”). Though the bill never advanced, there is a general consensus emerging among members of the House and the Senate that the tax should be re-evaluated over the interim. At the very least, the House Ways and Means Committee and the Senate Finance Committee will look at restructuring the tax; at most, the leadership may appoint a blue-ribbon panel to do so.

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### III. Sales Tax Legislation

Since a straight-up tax increase clearly was going to be off-limits during the session, attention during the interim turned to the possibility of removing exemptions and exclusions as an alternative means of increasing revenue. Both the Senate Finance Committee and the House Ways and Means Committee had been charged with examining the state’s major tax exemptions, including their costs and benefits, and with recommending adjustments as needed. Ways and Means, in particular, held numerous hearings to examine a long list of exempt goods and excluded services. Considering the state’s budget woes, it was anticipated going into the session that repealing exemptions and/or taxing more services was apt to receive considerable legislative attention, but the political momentum never developed.

In a similar vein, unlike the multiple attempts last session, only one bill was filed that contemplated exceeding the 2% local sales tax cap and it quietly faded away. Several bills were filed to

allow multiple sales tax rates to be levied in “designated areas” within certain special purpose districts; but, after TTARA raised objections about the tax compliance and administration difficulties involved, they were amended to remove the multiple rate option.

Arguably the most important result was that the timely-filer and prepayment discounts were not changed. The Legislative Budget Board in its *Government Effectiveness and Efficiency Report* had recommended dramatically reducing both discounts to produce an additional \$150 million in sales tax revenue. However, bills to make the recommended reductions got little traction in the face of stiff opposition, including that of TTARA.

#### A. Nexus

Although no “changes” in sales tax policy were enacted, some “clarifications” of existing policy were made. The highest profile change was that made to sales tax nexus standards in **SB 1 by Robert Duncan** (R-Lubbock), the state “fiscal matters” bill adopted in the special session. In response to the controversy surrounding the Comptroller’s \$269 million use tax assessment against Amazon based on the operation of a distribution warehouse in Irving, **Rep. John Otto** (R-Dayton) filed and passed **HB 2403** to clarify what activities constitute nexus for out-of-state vendors. Citing the risk of “severe unintended consequences” that might be caused, Governor Perry vetoed the bill. However, Rep. Otto attached its provisions to **SB 1**. As amended, Sections 151.008 and 151.107, Tax Code, respectively will:

- define as a retailer anyone who has an agreement with the owner of tangible personal property to sell, lease or rent the property without further action by the owner, and
- establish nexus for a business that owns more than a majority interest in a facility

that delivers goods to customers or in a business location that sells a similar line of products or is used to promote sales or maintain a marketplace.

A late attempt to provide a four-year implementation delay for vendors agreeing to create 5,000 new jobs and \$300 million in new investment was unsuccessful.

Last July language was added to the definition of “engaged in business” in Rule §3.2865(a)(2)(E) stating that deriving receipts from the use of a computer server or software located in Texas creates nexus. The Comptroller stated the new language was not intended to change long-standing policy that the mere storage of data on a computer server does not create nexus and that a clarifying rule amendment to that effect would be made. No amendment, however, had been offered by the start of the session. **HB 1841 by Rep. Will Hartnett** (R-Dallas) was enacted to remove the uncertainty caused by the rule change, thereby preventing the harm it would cause to Texas’ computer server businesses. It provides that:

- nexus is not created by the use of Internet hosting services, and
- a Texas service provider is not required to (1) examine data to determine user nexus, (2) report user activities to the Comptroller, or (3) advise users about the potential application of sales tax laws.

#### B. Sales for Resale

The 3rd Court of Appeals in March ruled against the Comptroller in *Combs v. Health Care Corporation [Blue Cross and Blue Shield]* by holding that a sale-for-resale exemption was valid for purchases of taxable goods and services used to contractually perform non-taxable administrative services for the federal government. In response, companion bills [**HB**

**3767 by Rep. Jim Pitts** (R-Waxahachie) and **SB 1721 by Sen. Robert Duncan** (R-Lubbock)] were filed to reverse the ruling. Ultimately, the bills' provisions became part of **SB 1**. The language as originally filed raised a number of concerns, such as how it might affect sales to non-profits and the performance of federal defense contracts. Working with the Comptroller's staff, TTARA and others were able to get the language changed to address the concerns, including a specific exemption from the proposed changes for those performing federal contracts with a list of federal agencies. However, the language as passed, in general, requires that goods may be purchased with a sale-for-resale exemption only if they will be later sold with or as a taxable item.

### C. Sales Tax Administration

Cities continue to have issues with the allocation and reallocation of local sales tax receipts. Legislation to address those concerns has been considered in the past several sessions and this session's iteration was **HB 590 by Rep. Senfronia Thompson** (D-Houston). As filed it would have allowed taxing jurisdictions that experienced reallocations above a threshold level to require that the Comptroller conduct an audit of the reallocation in which they could "participate." In response to TTARA's concerns, and that of others, the bill as passed contains no additional audit. It does allow local taxing jurisdictions to view up to five tax returns relating to a reallocation amounting to the lesser of \$200,000, 10% of prior year revenue, or 15% of revenue in the same month of the prior year. The tax return information remains confidential and the Comptroller may charge a fee for furnishing it.

### D. What Lies Ahead

As the workhorse of the state's revenue system—accounting for over two-thirds of state general revenues—the sales tax draws much of the attention in any discussion of "tax reform."

While those on the left call for "eliminating" exemptions and loopholes" to raise more tax dollars, others on the right call for "expanding the base" to generate new dollars to reduce existing tax rates. Regardless of how the money is to be used, there is a high degree of interest among lawmakers of all political persuasions in studying the base of the sales tax—an effort that is sure to be renewed during the current legislative interim. Whether the effort will be a formal one—a part of a very public committee effort—or a lower key evaluation by legislative caucuses and smaller groups of lawmakers is uncertain.

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*If you want more information about the sales tax, please contact TTARA's John Kennedy at [jkennedy@ttara.org](mailto:jkennedy@ttara.org) or at (512) 472-8838.*

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## IV. State Tax Administration

Unlike the lack of any major changes in sales tax policy, there were several significant developments regarding tax administration in general.

### A. Records Retention

The Comptroller has been concerned with the ability of taxpayers to successfully raise issues in court based on summary records without producing detailed supporting records when the adjudication takes place after the four-year limitation period for record retention has expired. In response, **HB 3772 by Rep. Jim Pitts** (R-Waxahachie) was filed to require taxpayers to keep records beyond four years if an administrative or judicial proceeding is pending.

The bill went nowhere, but during the regular session its provisions became part of the committee-reported versions of the companion "fiscal matters" bills – **SB 1811 by Sen. Robert Duncan** (R-Lubbock) and **HB 3790 by Rep. Jim Pitts** (R-Waxahachie). After the demise of

SB 1811, the records retention provisions were carried over as part of the special session's fiscal matters bills and were adopted in SB 1.

Just prior to floor consideration of SB 1, concerns were voiced about the increased burden on taxpayers and the possible restriction of taxpayer remedies. Of particular concern was a requirement that "all records" be retained and a provision stating that summary records, including accounting journals and ledgers, were insufficient to substantiate a taxpayer's claim without supporting "contemporaneous records."

In spite of the late hour, the Comptroller agreed to a meeting with TTARA and other concerned parties to resolve the troubling issues. Compromise language was developed to both clarify and preserve the Comptroller's intent and to resolve the potentially problematic provisions. As a result, the records that must be retained beyond the limitation period until a final resolution is made are only those related to the transactions in question. Most importantly, the provision relating to the insufficiency of summary records was deleted.

### B. Enforcement

**SB 934 by Sen. Tommy Williams** (R-The Woodlands) was adopted in response to the Comptroller's desire to statutorily enhance the tools available to investigate and prosecute tax fraud. As introduced the bill contained language that might have unintentionally affected law-abiding taxpayers. After discussions with the Comptroller, the troublesome language was changed relating to:

- 1) the ability to keep electronic records,
- 2) the intentional withholding of records, and
- 3) the commissioning of peace officers by the Comptroller.

The bill as passed should only affect taxpayers

who are suspected of committing tax fraud by increasing criminal penalties and enhancing tax record-keeping requirements.

### C. Prepayments

Three provisions of **SB 1** mandate one-time partial prepayments in August 2013 of sales, alcoholic beverages and motor fuels taxes. The regularly scheduled August payment of motor fuels taxes is increased by an amount equal to 25% of the taxes remitted in the previous July. The August payment of alcoholic beverage taxes must include an additional 25% of the amount due. Similarly, regular monthly sales taxpayers remitting by electronic funds transfer must increase their August payment by 25% of the amount otherwise due (normal monthly prepayers are not affected). The amount of any of these prepayments is to be claimed as a credit against the next tax payment in September 2013.

The prepayments plus the delay until September 2013 of the last two monthly transfers (July and August 2013) of the constitutionally dedicated motor fuels taxes from the General Revenue Fund to the Available School Fund and the Highway Fund were estimated to make an additional \$700 million available for appropriation.

### D. Tax Amnesty

Buried in the General Provisions of the state appropriations bill, **HB 1 by Jim Pitts** (R-Waxahachie) is Art. IX rider 18.28 stating the legislature's intent that the Comptroller provide a temporary tax amnesty period. The amnesty targets both those with and without tax permits that may have failed to report and remit taxes (excluded are taxpayers for which amounts have already been identified and are currently under review). The Comptroller is to waive penalty and interest. Formal details of the program will be developed and announced by the Comptroller.

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*If you want more information about issues relating to general tax administration, contact TTARA's John Kennedy at [jkennedy@ttara.org](mailto:jkennedy@ttara.org) or at (512) 472-8838.*

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## V. Economic Development

The tight budget led to a continuing debate over the role of economic development programs in helping Texas delay and minimize the impact of the national recession. TTARA argued that a number of these programs were critical to the state's ability to attract new investment; while others argued that state and local encouragement for economic development was either unnecessary or too expensive.

Two major incentive programs took the brunt of the attacks.

**Chapter 313 of the Tax Code** provides a method for school districts and taxpayers to enter into an agreement to limit the portion of new investment that will be subject to school taxes for a temporary eight-year period, before the entire value becomes taxable. This program has been used to entice some of the most significant projects Texas has won in recent years—ranging from large automotive plants and chemical facilities to smaller, but locally significant, manufacturers and energy producers.

Prior to the beginning of the session, the Comptroller and the Legislative Budget Board released reports calling for major changes in Chapter 313 that TTARA believed would have had severe detrimental effects on the program. Six bills were filed to implement those recommendations, as well as make other changes not included in the Comptroller or LBB reports.

Ultimately, none of these bills passed, but many of the issues raised by opponents of Chapter 313 and other economic development incentives are

certain to be raised again—both in the interim activities of House and Senate committees and in the work of a newly-created Select Committee on Economic Development. **HB 2785 by John Davis** (R–Houston) sets up the 12-member committee to objectively evaluate all of the economic development programs of the state, make recommendations about the criteria used to evaluate them and about how both the incentives offered and the way they are administered can be improved, and to suggest an overall economic development policy for the state. The committee will include four legislators, five “owners or employees of a businesses with significant operations” in Texas and three others whose qualifications are not specified. It is required to report its findings not later than January 1, 2013. Passage of this bill was one of TTARA's major priorities this session. Rep. Davis and Senate sponsors Florence Shapiro and Mike Jackson did yeoman's work in shepherding the bill through the process.

**Tax Increment Financing (TIF)** is a technique that has been used extensively to help with the development of a large number of commercial, residential and other projects around the state. This session saw a number of bills that affect the way TIF zones are created and administered, as well as bills that added to the types of projects that can use TIF's. The most comprehensive bill was **HB 2353 by John Davis** (R–Houston). It allows raw land to be designated as a reinvestment zone, allows the time during which a zone exists to be extended, and allows the parties to a TIF zone to designate specific projects to which a particular taxing jurisdiction will dedicate its incremental revenue. **HB 3465 by Sheffield** allows a school district to extend a tax increment zone beyond its current expiration date. This is significant because changes to the school finance system will begin treating a portion of school taxes that are in a TIF zone as a reduction in local taxes, effectively increasing state costs.

A specific type of TIF—a Transportation Reinvestment Zone (TRZ)—was also given expanded authority this session. **HB 563 by Joe Pickett** (D-El Paso) allows cities and counties to use TRZs to develop a wide variety of “transportation projects.” It also allows local governments to include incremental sales taxes collected in the zone as a part of their financing plans. Prior to **HB 563’s** passage, TRZs were limited to projects carried out under “pass-through financing” agreements with the Texas Department of Transportation (TxDOT). Under the bill’s provisions, TRZs should become more prominent and give a substantially greater role to local transportation planners.

While TIF and TRZ financing of development projects have played a minor role in financing public facilities in the past, signs point to them becoming far more common tools. Because these zones dedicate a portion of the growth in governmental revenues to specific projects or purposes, they will come under increasing scrutiny.

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*If you want more information about issues relating to economic development incentives or transportation finance, contact TTARA’s Bill Allaway at [ballaway@ttara.org](mailto:ballaway@ttara.org) or at (512) 472-8838.*

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## Are You Getting the Most From Your TTARA Membership?

The Texas Taxpayers and Research Association (TTARA) is the state’s pre-eminent membership association advocating for fair and equitable tax and fiscal policy. We communicate with our members, depending on their company membership level, in a number of different ways:

- TTARA’s Website provides access to copies of TTARA bill analyses, tax updates, handouts from meetings, and other critical documents,
- Webcasts each quarter focus on recent tax developments (also available on our website),
- Emails of:
  - Daily morning news items with links to the day’s top media stories on fiscal issues,
  - “Updates from the Tax Front,” as needed that focus on breaking tax developments,
- Meetings in Austin:
  - Legislative Committee: reviews key legislative proposals when lawmakers are in session,
  - State Tax Committee: reviews legislation and recent changes to sales, franchise, and other state taxes,
  - Property Tax Committee: reviews legislation and recent tax changes, and
  - Annual Meeting: our gathering with the state’s top fiscal leaders, (continuing education credit offered)
- Occasional luncheons (continuing education credit offered) in Texas metropolitan areas, and
- Newsletters and special reports.

Contact Ryan Ash at [ryan@ttara.org](mailto:ryan@ttara.org) or at (512) 472-8838 to sign up for any of the above that interest you. They are included as part of your company’s TTARA membership and not subject to any additional charge. And, of course, you may contact any of TTARA’s tax experts as needed.

# TTARA

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