

By: Perry

H.B. No. 3785

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the nullification of unconstitutional federal laws that
3 create or increase taxes and the enforceability of related federal
4 tax liens or levies; providing for a filing fee and providing
5 criminal penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. The legislature finds that:

8 (1) The people of the several states comprising the
9 United States of America created the federal government to be their
10 agent for certain enumerated purposes and nothing more.

11 (2) The Tenth Amendment to the United States
12 Constitution defines the total scope of federal power as being that
13 which has been delegated by the people of the several states to the
14 federal government, and all powers not delegated to the federal
15 government in the United States Constitution are reserved to the
16 states, respectively, or to the people themselves.

17 (3) The assumption of power that the federal
18 government has made by enacting the "Patient Protection and
19 Affordable Care Act" (PPACA) interferes with the right of the
20 people of the State of Texas to regulate health care as they see
21 fit.

22 (4) The decision of the United States Supreme Court to
23 uphold the individual mandate in the PPACA as a tax is invalid
24 because:

1 (A) the legislative intent was to enforce it as a
2 penalty; the court chose to legislate from the bench by classifying
3 it as a tax; this is a clear overreach of judicial power, as all
4 legislative powers are vested in the United States Congress;

5 (B) after classifying the individual mandate as a
6 tax, the court failed to recognize it as a direct tax; just as a tax
7 on land based solely on its rental income is the same as a direct tax
8 on the land itself, a tax on individuals based solely on their
9 decision not to buy health insurance is a direct tax on individuals;
10 to get around this, Chief Justice Roberts ruled that the individual
11 mandate is indirect because not everyone will have to pay it;
12 however, the percentage of people ultimately subject to a tax does
13 not determine into which category it falls; less than two percent of
14 Americans were subject to the original income tax, yet the court
15 still viewed it as a direct tax; and

16 (C) the PPACA was improperly passed by Congress;
17 according to Section 7, Article I, United States Constitution, "All
18 Bills for raising Revenue shall originate in the House of
19 Representatives; but the Senate may propose or concur with
20 Amendments as on other Bills;" the bill that passed the House, H.R.
21 3590, was a revenue bill that the Senate amended; the original
22 bill's purpose was to amend the Internal Revenue Code of 1986 to
23 modify the first-time homebuyer's credit in the case of members of
24 the armed forces and certain other federal employees and for other
25 purposes; when the Senate amended the bill, nothing was left of the
26 original bill; it instead became a completely new revenue bill
27 containing multiple taxes, as well as the provisions for Obamacare;

1 this is, in effect, a case of the Senate originating a revenue bill,
2 and this clearly violates the United States Constitution.

3 (5) The federal law known as the "Patient Protection
4 and Affordable Care Act," signed by President Barack Obama on March
5 23, 2010, is not authorized by the United States Constitution and
6 violates its true meaning and intent as given by the Founders and
7 Ratifiers and is hereby declared to be invalid in this state, shall
8 not be recognized by this state, is specifically rejected by this
9 state, and shall be considered null and void and of no effect in
10 this state. All taxpayers in the State of Texas are absolved of all
11 tax liabilities arising from the PPACA, although an individual
12 taxpayer may voluntarily pay those taxes.

13 (6) The policy enacted in the following sections will
14 allow this state to protect its citizens from tax liabilities
15 created by the PPACA. If the legislature nullifies other
16 unconstitutional federal laws that create or increase taxes, the
17 same policies shall be used to protect citizens from those tax
18 liabilities.

19 (7) Through peaceful noncompliance with
20 unconstitutional federal acts:

21 (A) the rule of law can once again be established
22 in the United States; and

23 (B) the maxim that the agent, the federal
24 government, is not greater than the principal, the states, can once
25 again be established.

26 SECTION 2. Section 14.003, Property Code, is amended to
27 read as follows:

1 Sec. 14.003. EXECUTION OF NOTICES AND CERTIFICATES. Except
2 as provided by Section 45.101, certification [~~Certification~~] of
3 notices of liens, certificates, or other notices affecting federal
4 liens by the secretary of the treasury of the United States or the
5 secretary's [~~his~~] delegate, or by any official or entity of the
6 United States responsible for filing or certifying of notice of any
7 other lien, entitles them to be filed and no other attestation,
8 certification, or acknowledgment is necessary.

9 SECTION 3. Section 14.004(a), Property Code, is amended to
10 read as follows:

11 (a) Except as provided by Section 45.101, if [~~If~~] a notice
12 of federal lien, a refiling of a notice of federal lien, or a notice
13 of revocation of any certificate described in Subsection (b) is
14 presented to a filing officer who is:

15 (1) the secretary of state, the secretary of state
16 [~~he~~] shall cause the notice to be marked, held or placed on
17 microtext, and indexed in accordance with the provisions of Section
18 9.519, Business & Commerce Code, as if the notice were a financing
19 statement within the meaning of that code; or

20 (2) any other officer described in Section 14.002, the
21 officer [~~he~~] shall endorse thereon the officer's [~~his~~]
22 identification and the date and time of receipt and forthwith file
23 it alphabetically in the real property records and if requested by
24 the party submitting the document, in the personal property files
25 or enter it in an alphabetical index for real or personal property,
26 as appropriate, showing the name and address of the person named in
27 the notice, the date and time of receipt, the title and address of

1 the official or entity certifying the lien, and the total amount
2 appearing on the notice of lien.

3 SECTION 4. Subtitle A, Title 5, Property Code, is amended by
4 adding Chapter 45 to read as follows:

5 CHAPTER 45. FEDERAL TAX LIENS AND LEVIES

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 45.001. DEFINITIONS. (a) In this chapter:

8 (1) "Federal tax authorities" means the secretary of
9 the treasury of the United States or the secretary's delegate, or
10 any official or entity of the United States responsible for filing
11 liens, executing levies, or collecting federal tax of any sort.

12 (2) "Lawful federal taxes" means any federal tax
13 enacted by a constitutional Act of the United States Congress.

14 (3) "Taxpayer" means any person liable for any federal
15 tax or excise and includes a corporation or partnership whose
16 principal executive office is in this state, as provided by the
17 internal revenue laws of the United States.

18 (4) "Unlawful federal taxes" means any federal tax
19 enacted by or the percentage an existing tax is increased by an
20 unconstitutional Act of the United States Congress that has been
21 nullified by the legislature.

22 Sec. 45.002. EFFECT ON COLLECTION OF FEDERAL TAXES. This
23 chapter may not be construed to affect the collection of lawful
24 federal taxes.

25 SUBCHAPTER B. CLAIM OF NON-LIABILITY FOR UNLAWFUL FEDERAL TAXES

26 Sec. 45.051. REGISTRATION OF CLAIM. (a) A taxpayer may
27 register a claim of non-liability for unlawful federal taxes by

1 filing a form prescribed under this section with the secretary of
2 state.

3 (b) The secretary of state shall provide a form for
4 registration of a claim under this section. The form must be
5 verified and must include:

6 (1) the name, address, and social security number or
7 taxpayer identification number of the claimant; and

8 (2) a complete list of all unlawful federal taxes for
9 which the claimant may seek to claim non-liability.

10 (c) If the legislature nullifies an unconstitutional
11 federal Act that enacts a new tax or increases the percentage of an
12 existing tax, the form provided under Subsection (b) shall be
13 amended as needed to list those taxes.

14 (d) A taxpayer may register a claim of non-liability not
15 later than the 30th day after the date the federal tax form is filed
16 in compliance with federal regulations. Claims of non-liability
17 may be registered for each tax year for which protection is sought.
18 In the case of federal taxes filed quarterly, except for estimated
19 tax payments, claims may be registered for each quarter for which
20 protection is sought.

21 (e) The filing fee for registering a claim under this
22 section is \$30.

23 (f) A document filed under this section is not a public
24 record for the purposes of Chapter 552, Government Code, and may be
25 made available only to the claimant or federal tax authorities upon
26 request.

27 Sec. 45.052. DOCUMENTATION OF FEDERAL TAX AUTHORITY'S RIGHT

1 TO FILE NOTICE OF FEDERAL TAX LIEN OR EXECUTE LEVY. (a) The
2 secretary of state shall provide a form for granting permission to
3 federal authorities to file a notice of federal tax lien or execute
4 a levy against a taxpayer who has registered a claim under Section
5 45.051. The form must be verified and must include:

6 (1) the name, address, and social security number or
7 taxpayer identification number of the taxpayer;

8 (2) the name of the federal tax authority requesting
9 the form;

10 (3) verification that the federal tax authority has
11 proven the taxpayer is liable for lawful federal taxes;

12 (4) the dollar amount for which the federal tax
13 authority may impose a lien or levy against the taxpayer; and

14 (5) the seal of the State of Texas.

15 (b) The form shall be completed by the secretary of state
16 and issued to federal tax authorities only if the applicable
17 requirements of Section 45.101(c) or 45.152(c) are met.

18 Sec. 45.053. DOCUMENTATION OF DUE DILIGENCE OF FEDERAL TAX
19 AUTHORITIES IN ABSENCE OF TAXPAYER CLAIM. (a) The secretary of
20 state shall provide a form attesting that federal tax authorities
21 have verified with the office of the secretary of state that a
22 taxpayer has not registered a claim of non-liability for unlawful
23 federal taxes under Section 45.051. The form must be verified and
24 must include:

25 (1) the name, address, and social security number or
26 taxpayer identification number of the claimant;

27 (2) the name of the federal tax authority performing

1 the due diligence; and

2 (3) the seal of the State of Texas.

3 (b) The form shall be completed by the secretary of state
4 and issued to federal tax authorities only if the requirements of
5 Section 45.101(b) or 45.152(b) are met.

6 SUBCHAPTER C. FEDERAL TAX LIENS

7 Sec. 45.101. PRELIMINARY PROCEDURES FOR FILING NOTICE OF
8 FEDERAL TAX LIEN. (a) Before filing a notice of federal tax lien,
9 federal tax authorities must determine through the secretary of
10 state's office whether the taxpayer has registered a claim of
11 non-liability for unlawful federal taxes under Section 45.051. A
12 filing is not valid and a filing officer may not accept a filing
13 without the documentation described by Subsection (b) or (c).

14 (b) If the taxpayer has not registered a claim under Section
15 45.051, the federal tax authorities must obtain the form described
16 by Section 45.053 and present that documentation to the filing
17 officer at the appropriate filing location under Section 14.002.

18 (c) If the taxpayer has registered a claim under Section
19 45.051, the federal tax authorities must provide to the secretary
20 of state an itemized list of the taxpayer's tax liability, citing
21 each tax owed and the amount owed per tax listed. If that list does
22 not show the taxpayer is liable for lawful federal taxes, the
23 federal tax authorities may not be permitted to file a notice of
24 federal tax lien against the taxpayer's property or property in
25 which third parties have an interest. If the list shows the
26 taxpayer is liable for lawful federal taxes:

27 (1) the secretary of state shall issue the form

1 described by Section 45.052 to the federal tax authorities; and

2 (2) the federal tax authorities, if that documentation
3 is presented to the filing officer at the appropriate filing
4 location under Section 14.002, shall be permitted to file a notice
5 of federal tax lien against the taxpayer's property, or property in
6 which third parties have an interest, up to the amount attributable
7 to those lawful taxes.

8 SUBCHAPTER D. PROCEDURES FOR EXECUTING FEDERAL TAX LEVY

9 Sec. 45.151. SCOPE OF SUBCHAPTER. This subchapter applies
10 only to how federal tax levies shall be executed in harmony with
11 Subchapter B.

12 Sec. 45.152. PRELIMINARY PROCEDURES FOR EXECUTING FEDERAL
13 TAX LEVY. (a) Before executing a federal tax levy, federal tax
14 authorities must determine through the secretary of state's office
15 whether the taxpayer has registered a claim of non-liability for
16 unlawful federal taxes under Section 45.051 and obtain the
17 documentation described by Subsection (b) or (c).

18 (b) If the taxpayer has not registered a claim under Section
19 45.051, the federal tax authorities must obtain the form described
20 by Section 45.053.

21 (c) If the taxpayer has registered a claim under Section
22 45.051, the federal tax authorities must provide to the secretary
23 of state an itemized list of the taxpayer's tax liability, citing
24 each tax owed and the amount owed per tax listed. If that list does
25 not show the taxpayer is liable for lawful federal taxes, the
26 federal tax authorities may not be permitted to execute the federal
27 tax levy against the taxpayer's property or property in which third

1 parties have an interest. If the list shows the taxpayer is liable
2 for lawful federal taxes:

3 (1) the secretary of state shall issue the form
4 described by Section 45.052 to the federal tax authorities; and

5 (2) the federal tax authorities shall be permitted to
6 levy against the taxpayer's property, or property in which third
7 parties have an interest, up to the amount attributable to those
8 lawful taxes.

9 Sec. 45.153. THIRD PARTIES. Federal tax authorities may
10 not levy third parties and a third party may not comply with a levy
11 by federal tax authorities unless the conditions of Section 45.152
12 are met.

13 SUBCHAPTER E. OFFENSES

14 Sec. 45.201. UNLAWFUL LEVY; UNLAWFUL COMPLIANCE. (a) A
15 person who is a federal tax authority commits an offense if the
16 person executes or attempts to execute a federal tax levy,
17 including a levy of a third party, without following the procedures
18 prescribed by Section 45.152.

19 (b) A third party who complies with a federal tax levy in
20 violation of Section 45.153 commits an offense.

21 (c) An offense under this section is a Class B misdemeanor
22 punishable by confinement for a term not to exceed 180 days, a fine
23 of not more than \$5,000, or both the confinement and the fine.

24 SECTION 5. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2013.