

# Special Inventory

PENALTIES

FINES & MORE

PENALTIES

James Guest

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# Special Inventory Tax History

- ▶ The central appraisal district (CAD) was responsible to value inventory held by automobile, heavy equipment, trailer and boat dealers.
- ▶ They did so largely by counting the inventory then multiplying the total number by the average cost.
- ▶ This required them to find the cars on January 1st.

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# History Continued...

- ▶ Texas Automobile Dealers Association Lobbied for change!
- ▶ There were several problems with the former method of calculating inventory such as:
  - ▶ The manufacturers would send cars to Dealers, and the Dealers had no control of how many vehicles they would have on January 1.
  - ▶ Some Dealers would hide cars making it unfair to those who paid taxes on their inventory.
  - ▶ Other business inventory was not counted on January 1.

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## Special Inventory Tax Now

- ▶ Texas Legislature enacted laws that identify Special Inventory Dealers and place the burden on those Dealers to provide inventory to both the Chief Appraiser and the Tax Assessor Collector.
- ▶ These new laws are more fair to the Dealers, but failure not to properly adhere to these new laws have strict and hefty penalties.

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## What is Special Inventory

- ▶ **Motor Vehicle Inventory**
  - ▶ Property Tax Code §23.121, §23.122, and §23.123
- ▶ **Vessel and Outboard Motor Inventory**
  - ▶ Property Tax Code §23.124, §23.125, and §23.126
- ▶ **Heavy Equipment Inventory**
  - ▶ Property Tax Code §23.1241, §23.1242, and §23.1243
- ▶ **Manufactured Housing Retailers**
  - ▶ Property Tax Code §23.123, §23.127, and §23.128

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## Who Files Special Inventory

- ▶ **Motor Vehicle Inventory 23.121(a)(3)**
  - ▶ "Dealer" means a person who holds a dealer's general distinguishing number issued by the Texas Department of Motor Vehicles...
- ▶ **Vessel and Outboard Motor Inventory 23.124(a)(3)**
  - ▶ "Dealer" means a person who holds a dealer's and manufacturer's number issued by the Parks and Wildlife Department...
- ▶ **Heavy Equipment Inventory 23.1241(a)(1)**
  - ▶ "Dealer" means a person engaged in the business...of selling, leasing, or renting heavy equipment.
- ▶ **Manufactured Housing Retailers 23.127(a)(1)**
  - ▶ Retailer (defined by 1201.003 occupation code) as a person who:
  - ▶ ...is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale or exchange to consumers, including a person who maintains a location for the display of manufactured homes; and (B) sells or exchanges at least two manufactured homes to consumers in a 12-month period.

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## Annual Declaration

- ▶ 23.121 (f) ... not later than February 1 of each year...each dealer shall file a declaration with the chief appraiser and file a copy with the collector. The declaration is sufficient to comply with this subsection if it sets forth the following information:
  - ▶ (1) the name and business address of each location at which the dealer owner conducts business;
  - ▶ (2) each of the dealer's general distinguishing numbers issued by the Texas Department of Transportation;
  - ▶ (3) a statement that the dealer owner is the owner of a dealer's motor vehicle inventory; and
  - ▶ (4) the market value of the dealer's motor vehicle inventory for the current tax year as computed under Section 23.121(b) of this code.

Vessels and Outboard Motors 23.124, Heavy Equipment 23.1241, Manufactured Housing 23.127, Motor Vehicles 23.121

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## Annual Declaration 50-244

**Confidential**

The image shows three screenshots of the 'Dealer's Motor Vehicle Inventory Declaration' form. The first screenshot shows the header and introductory text. The second screenshot shows a table for listing motor vehicles with columns for description, distinguishing number, and value. The third screenshot shows the bottom section of the form with checkboxes for 'I am the owner of the motor vehicle inventory' and 'I am not the owner of the motor vehicle inventory'.

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## Monthly Statement (Monthly Report)

- ▶ 23.122 (e) The comptroller shall promulgate a form entitled a Dealer's Motor Vehicle Inventory Tax Statement. Each month a dealer shall complete the form with respect to each motor vehicle sold. A dealer may use no other form for that purpose. The statement may include the information the comptroller deems appropriate but shall include at least the following:
  - (1) a description of the motor vehicle sold;
  - (2) the sales price of the motor vehicle;
  - (3) the unit property tax of the motor vehicle if any; and
  - (4) the reason no unit property tax is assigned if no unit property tax is assigned.

Motor Vehicles 23.122, Heavy Equipment 23.1242, Manufactured Housing 23.129, Vessels and Outboard Motors 23.125

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## Monthly Statement 50-246

Confidential

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## Confidential

- ▶ Except as provided by this section, a declaration or statement filed with a chief appraiser or collector as required by Section 23.121 or Section 23.122 of this code is confidential and not open to public inspection....

Applies to Motor Vehicle SIT 23.123, and Vessels and Outboard Motors SIT 23.126

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## Calculating Unit Property Tax Value ("UPTV")

- ▶ = total the tax rates for all taxing entities the property is subject to and divide by 12 (months) /100

City of El Paso	0.63300
Ysleta ISD	1.330000
El Paso County	0.338258
EP Comm College	0.105670
Univ. Medical Cen	0.179405
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	2.586333 /100/12 = .002155

(\*\*\*\*divide by 100 if aggregate tax rate is expressed in dollars per \$100 of valuation)

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## Market Value

- ▶ Market value is total annual sales less sales to dealers, fleet transactions and subsequent sales, from the dealer's motor vehicle inventory for the previous 12-month period corresponding to the prior tax year divided by 12.
- ▶ Total annual sales is the total of the sales price from every sale from a dealer's motor vehicle inventory for a 12-month period.

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## Calculating SIT Taxes

- ▶  $UPTV \times \text{Market Value} / 12 = \text{SIT}$
- ▶ Pre Payment of Taxes
  - ▶ Taxes are pre-paid each month
  - ▶ Taxes are delinquent if not paid by January 31 of the subsequent year taxes are levied
  - ▶ \*\*\*Please note there are no current year taxes due for Dealers who open their doors after January 1
  - ▶ \*\*\*Taxes are due ONLY for Dealers who are open on January 1 of current tax year, and who have prior year sales

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## Example 1 (Dealer opens doors 2017)

- ▶ Motor Vehicle Dealer opens her doors on January 2, 2017
- ▶ Dealer must submit (to chief appraiser and collector) an Annual Declaration within 30 days of opening business (23.121(b))
- ▶ Dealer must submit (to chief appraiser and collector) a Statement by February 10 (if no cars sold, then must be stated on Statement); (each subsequent month a Statement must be filed by the 10<sup>th</sup> day of the month(23.121(f))
- ▶ \*\*\*No taxes are due each month the Dealer was in business his first year, but a monthly Statement must be filed

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### Example 1 Continued... (2018)

- ▶ Dealer must file a new Declaration by February 1
- ▶ Dealer's SIT taxes are levied against Dealer on January 1, 2018, which is determined by the Chief Appraiser using sales data of Dealer from the prior year (23.121(c))
- ▶ Dealer must submit monthly statement and pre-pay taxes against each vehicle sold by 10<sup>th</sup> day of each month. (Dealer typically passes this cost onto each purchaser of a vehicle).

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### Example 1 Continued... (2019)

- ▶ On January 1, 2019 taxes are levied
- ▶ If there is a deficit, 2018 taxes are delinquent February 1, 2019
  - ▶ Any overage is distributed to taxing entities (23.122(k))
- ▶ Declaration must be filed by February 1, 2019
- ▶ Statement and monthly pre-paid taxes are due by 10<sup>th</sup> of each month

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## SIT Fines & Penalties

- ▶ Declaration Late Filing Fine
- ▶ Declaration Late Filing Penalty
- ▶ Statement Late Filing Fine
- ▶ Statement Late Filing Penalty
- ▶ Escrow Late Payment Penalty
- ▶ Inspection of Documentation Fine

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## Declaration

### Misdemeanors, Fines & Penalties

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## SIT Timeline and Deadlines

- ▶ January 1: Property tax levied (32.01)
- ▶ February 1: Declaration must be filed (23.122)
  - ▶ Dealers that open a business after January 1 must file a declaration 30 days from commencing business
- ▶ 10<sup>th</sup> of the month statement must be filed and taxes paid (23.122)
  - ▶ Vehicles
  - ▶ Outboard Motors
  - ▶ Vessels
- ▶ 20<sup>th</sup> of the month statement must be filed and taxes paid (23.1242)
  - ▶ Heavy Equipment

Note\*\*\* Taxes paid before January 31 of the year following the date on which they are due are not delinquent

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## Annual Declaration Fines & Penalties

- ▶ 23.121(j) ...An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$500. Each day during which a person fails to comply with the terms of Subsection (g) of this section is a separate violation.
- ▶ (k) ... A tax lien attaches to the dealer's business personal property to secure payment of the penalty... A penalty forfeited under this subsection is \$1,000 for each month or part of a month in which a declaration is not filed after it is due.

\*\*\*No misdemeanor or fine for heavy equipment

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## Late Filing of Declaration

### Misdemeanors, Fines & Penalties

- ▶ **Motor Vehicles** 23.121(i),(k)
  - ▶ Misdemeanor (\$500 fine a day until filed)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)
  
- ▶ **Vessels and Outboard Motors** 23.124(i),(k)
  - ▶ Misdemeanor (\$500 fine a day until filed)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)
  
- ▶ **Manufactured Housing** 23.127(i),(k)
  - ▶ Misdemeanor (\$500 fine a day until filed)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)
  
- ▶ **Heavy Equipment** 23.124(j)
  - ▶ **NO** Misdemeanor
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)

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## Who Collects

### Annual Declaration Late Filing Penalty Motor Vehicle 23.121(k)

- ▶ ...A **tax lien** attaches to the dealer's business personal property to secure payment of the penalty.
- ▶ ...The appropriate district attorney, criminal district attorney, county attorney, chief appraiser, or person designated by the chief appraiser shall collect the penalty established by this section **in the name of the chief appraiser.**

\$1,000 monthly penalty (delinquent any part of the month)

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## Who Collects

### Annual Declaration Late Filing Penalty Vessel and Outboard Motor 23.124(k)

- ▶ ...A **tax lien** attaches to the dealer's business personal property to secure payment of the penalty.
- ▶ ...The appropriate district attorney, criminal district attorney, or county attorney, shall collect the penalty established by this section **in the name of the chief appraiser or collector.**

\$1,000 monthly penalty (delinquent any part of the month)

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**Who Collects**  
 Annual Declaration Late Filing Penalty  
 Heavy Equipment 23.1241 (j)

- ▶ ...A **tax lien** attaches to the dealer's business personal property to secure payment of the penalty.
- ▶ ...The appropriate district attorney, criminal district attorney, or county attorney **may collect** the penalty established by this section **in the name of the collector.**
- ▶ The chief appraiser may collect the penalty **in the name of the chief appraiser.**
  - ▶ The chief appraiser or the appropriate district attorney, criminal district attorney, or county attorney **may sue** to enforce compliance with this section.

\$1,000 monthly penalty (delinquent any part of the month)

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**Who Collects**  
 Annual Declaration Late Filing Penalty  
 Retail Manufactured Housing 23.127 (k)

- ▶ ...A **lien** attaches to the retailer's business personal property to secure payment of the penalty.
- ▶ ...The appropriate district attorney, criminal district attorney, county attorney, chief appraiser, **or person designated by the chief appraiser shall collect** the penalty established by this section **in the name of the chief appraiser.**

\$1,000 monthly penalty (delinquent any part of the month)

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**STATEMENT** (Monthly Report)  
 Misdemeanors, Fines & Penalties

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## Statement Fines & Penalties

### Penalties for Failure to File Monthly statements

- ▶ 23.122 (m) A dealer who fails to file a statement ... commits an offense ... is **a misdemeanor** punishable by **a fine** not to exceed **\$100. Each day** during which a dealer fails to comply with the terms of this subsection is a separate violation.
- ▶ 23.122(n) ...a dealer who fails to file a statement as required by this section shall forfeit **a penalty**. ...The appropriate district attorney, criminal district attorney, county attorney, collector, or person designated by the collector shall collect the penalty established by this section **in the name of the collector**. ... A penalty forfeited under this subsection is **\$500 for each month or part of a month** in which a statement is not filed after it is due.

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## Late Filing of Statement Misdemeanors, Fines & Penalties

- ▶ **Motor Vehicles** 23.122(m),(n)
  - ▶ Misdemeanor (\$100 fine a day until filed)
  - ▶ \$500 Penalty each month until filed [Tax Lien BPP]
- ▶ **Vessels and Outboard Motors** 23.125(m),(n)
  - ▶ Misdemeanor (\$100 fine a day until filed)
  - ▶ \$500 Penalty each month until filed [Tax Lien BPP]
- ▶ **Manufactured Housing** 23.128(j),(m)
  - ▶ Misdemeanor (\$100 fine a day until filed)
  - ▶ \$500 Penalty each month until filed [Tax Lien BPP]
- ▶ **Heavy Equipment** 23.1242(m)
  - ▶ \$500 Penalty each month until filed [Tax Lien BPP]

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## Escrow Payment Penalties

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## Prepayment Escrow Account

**VIT/SIT** vehicle (23.122(b), vessels and outboard inventory 23.25(b), Manufactured Housing Retailers (23.128(b))

- 23.122 (b)
  - ...On or before the 10th day of each month the owner shall, together with the statement
  - ...deposit with the collector a sum equal to the total of unit property tax assigned to all motor vehicles sold from the dealer's motor vehicle inventory in the prior month to which a unit property tax was assigned. ...
- 23.122 (c)
  - ...The collector is not required to maintain a separate account in the depository for each escrow account created

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## Prepayment Escrow Account

### HEAVY EQUIPMENT (THE EXCEPTION)

- 23.1242 (b)
  - ...On or before the 20th day of each month the owner shall, together with the statement
  - ...deposit with the collector an amount equal to the total of unit property tax assigned to all items of heavy equipment sold, leased, or rented from the dealer's heavy equipment inventory in the preceding month to which a unit property tax was assigned...

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## Non-Payment of Escrow Taxes

### Penalties

- ▶ An owner who fails to remit unit property taxes due as required by this section shall pay a **penalty of five percent** of the amount due.
- ▶ If the amount due is not paid within 10 days after the due date, the owner shall pay an **additional penalty of five percent** of the amount due.
- ▶ Notwithstanding the terms of this section, unit property taxes paid on or before January 31 of the year following the date on which they are due are not delinquent.
- ▶ The collector, the collector's designated agent, or the county or district attorney shall enforce the terms of this subsection.
- ▶ A penalty under this subsection is in addition to any other penalty provided by law if the owner's taxes are delinquent.

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## Non-Payment of Escrow Taxes Penalties

- ▶ **Motor Vehicles** 23.122(o)
  - ▶ 5% Additional Penalty if not paid by 11<sup>th</sup> of the month
  - ▶ +5% Additional Penalty if not paid by the 21<sup>st</sup> of the month
- ▶ **Vessels and Outboard Motors** 23.125(o)
  - ▶ 5% Additional Penalty if not paid by 11<sup>th</sup> of the month
  - ▶ +5% Additional Penalty if not paid by the 21<sup>st</sup> of the month
- ▶ **Manufactured Housing** 23.128(n)
  - ▶ 5% Additional Penalty if not paid by 11<sup>th</sup> of the month
  - ▶ +5% Additional Penalty if not paid by the 21<sup>st</sup> of the month
- ▶ **Heavy Equipment** 23.1242(n)
  - ▶ 5% Additional Penalty if not paid by 21<sup>st</sup> of the month
  - ▶ +5% Additional Penalty if not paid until after 31<sup>st</sup> day of the month

Note: Tex. Prop. Tax Code 1.06: If the last day for the performance of an act is a Saturday, Sunday, or legal state or national holiday, the act is timely if performed on the next regular business day.

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## Escrow Account Interest

- ▶ The collector shall retain any interest generated by the escrow account to defray the cost of administration of the prepayment procedure established by this section. Interest generated by an escrow account created as provided by this section is the **sole property of the collector** and may not be used by an entity other than the collector. Interest generated by an escrow account may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.
- ▶ Applies to **ALL SIT**
  - ▶ 23.122 (c) Motor Vehicle Inventory
  - ▶ 23.1242(c) Heavy Equipment Dealers
  - ▶ 23.125(c) Vessel and Outboard Motor Inventory
  - ▶ 23.128(c) Manufactured Housing Retailers

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## Whose Money?

### Late Filing of Statement and Escrow Payments

Motor Vehicles 23.122(p), Heavy Equipment 23.1242(o), Manufactured Housing Retailers 23.128(o)

- ▶ Fines collected pursuant to the authority of this section shall be deposited in the county depository to the credit of the general fund. 23.122 (p)
- ▶ ...**Penalties** collected... are the **sole property of the collector**, may be used by no entity other than the collector, and may not be used to reduce or otherwise affect the annual appropriation to the collector that would otherwise be made.

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# Whose Money?

## Late Filing of Statement and Escrow Payments Vessels and Outboard Motors 23.125(p)

- ▶ **Fines and Penalties** collected pursuant to the authority of this section shall be deposited in the county depository to the credit of the **general fund**.

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# Waiver of Penalties

- ▶ §23.129
  - ▶ A Chief Appraiser may waive Declaration Penalties
    - ▶ §23.121(k) Motor Vehicle
    - ▶ §23.124(j) Heavy Equipment
  - ▶ A Collector may waive Tax Statement Penalties
    - ▶ §23.122(n) Motor Vehicles
    - ▶ §23.124(m) Heavy Equipment
- ▶ Waiver permitted only if:
  - ▶ TP files written application NLT 30 days after declaration or statement due date, and
  - ▶ TP's failure to file timely was the result of a DISASTER making filing impossible, or an event beyond the control of TP that DESTROYED TP's property or records.
  - ▶ TP must be otherwise be in compliance with filing rules

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# COLLECTING FINES & PENALTIES

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# Fines & Penalty Collection Issues

- ▶ Who will collect?
- ▶ How do we track delinquencies?
- ▶ Does my collection software have a SIT module?
- ▶ Should letters be mailed?
- ▶ If so, who mails the letters?
- ▶ Due process concerns
- ▶ Does Waiver of penalties apply ?

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# Run Reports

- ▶ Collection Software VIT/SIT collection modules
  - ▶ Run year to date dealer reports
  - ▶ Print letters

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# Year to Date, Dealer Report

EL PASO COUNTY  
COMPOSITE SUMMARY OF  
SPECIAL INVENTORY DEALER MOTOR VEHICLE ACCOUNTS FOR THE YEAR 2015  
AS OF 12/31/2015

Account No.	Vehicle Make	Model	Plate	Registration	County	Payment Type	Monthly Status	Vehicle Use	Non-Physical Coll	Account Coll	Open Status
1560-110000001	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
1560-110000002	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
1560-110000003	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
<b>Total</b>											
1560-110000004	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
1560-110000005	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
<b>Total</b>											
1560-110000006	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
1560-110000007	CHEV	2010	9856	05	161	REGISTRATION	INCOMPLETE				
<b>Total</b>											

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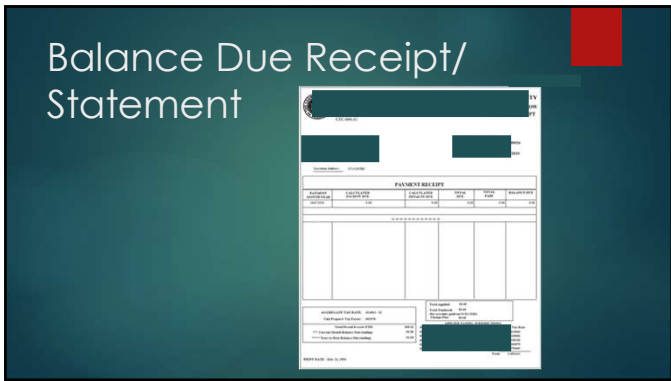
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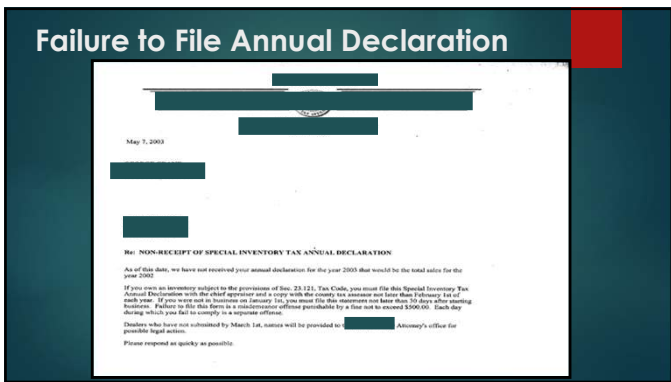
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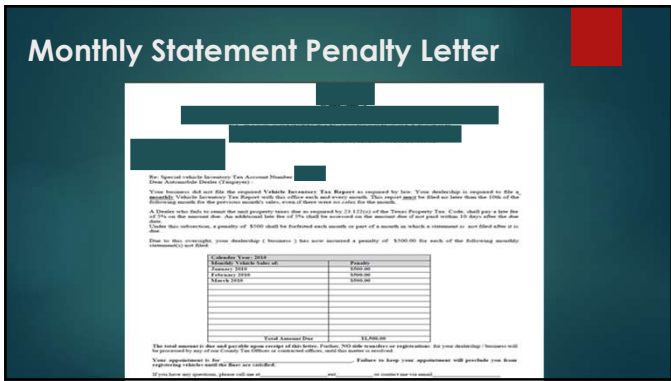
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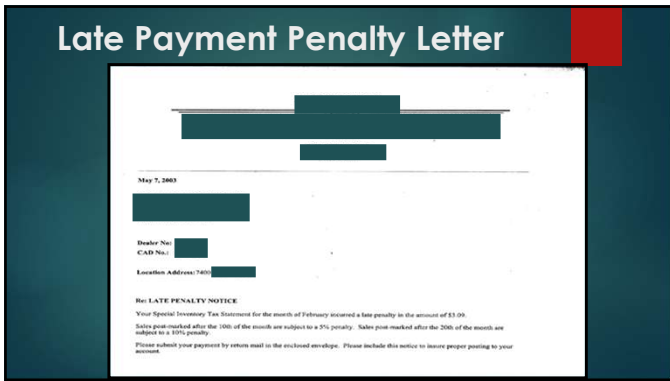
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## Strategies

Depends on County Collector Policy

- ▶ Strategy will likely depend on the size of your office and county resources
- ▶ For Fines: Some offices utilize both County Attorney and District Attorney  
TAC → County Attorney → District Attorney → TAC → Tax Payer
- ▶ For Penalties: offices utilize the tax office only  
TAC → Tax Payer

\*\*\*Contract between Chief Appraiser and Tax Office

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## Recruit Constable or Sheriff to Enforce Misdemeanor Violations \ Fines

Statement (Monthly Report)	Declaration
<ul style="list-style-type: none"> <li>▶ <b>Motor Vehicles</b> 23.122(m)               <ul style="list-style-type: none"> <li>▶ Misdemeanor                   <ul style="list-style-type: none"> <li>▶ \$100 Fine a day until filed</li> </ul> </li> </ul> </li> <li>▶ <b>Vessels and Outboard Motors</b> 23.125(m)               <ul style="list-style-type: none"> <li>▶ Misdemeanor                   <ul style="list-style-type: none"> <li>▶ \$100 Fine a day until filed</li> </ul> </li> </ul> </li> <li>▶ <b>Manufactured Housing</b> 23.129(l)               <ul style="list-style-type: none"> <li>▶ Misdemeanor                   <ul style="list-style-type: none"> <li>▶ \$100 Fine a day until filed</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>Motor Vehicles</b> 23.121 (l)               <ul style="list-style-type: none"> <li>▶ Misdemeanor                   <ul style="list-style-type: none"> <li>▶ \$500 Fine a day until filed</li> </ul> </li> </ul> </li> <li>▶ <b>Vessels and Outboard Motors</b> 23.124(l)               <ul style="list-style-type: none"> <li>▶ Misdemeanor                   <ul style="list-style-type: none"> <li>▶ \$500 Fine a day until filed</li> </ul> </li> </ul> </li> <li>▶ <b>Manufactured Housing</b> 23.127(i)               <ul style="list-style-type: none"> <li>▶ Misdemeanor                   <ul style="list-style-type: none"> <li>▶ \$500 Fine a day until filed</li> </ul> </li> </ul> </li> </ul>

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### Add Late Filing Penalty To Tax Roll

- ▶ Penalty tax liens can be enforced the same as other delinquent business personal property accounts.

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### Add Penalty to Tax Roll, and Enforce BPP Tax Liens \ Penalties

#### Statement (Monthly Report)

- ▶ **Motor Vehicles** 23.122(n)
  - ▶ \$500 Penalty each month until filed (Tax Lien BPP)
- ▶ **Vessels and Outboard Motors** 23.125(n)
  - ▶ \$500 Penalty each month until filed (Tax Lien BPP)
- ▶ **Manufactured Housing** 23.129(m)
  - ▶ \$500 Penalty each month until filed (Tax Lien BPP)
- ▶ **Heavy Equipment** 23.1242(m)
  - ▶ \$500 Penalty each month until filed (Tax Lien BPP)

#### Declaration

- ▶ **Motor Vehicles** 23.121(k)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)
- ▶ **Vessels and Outboard Motors** 23.124(k)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)
- ▶ **Manufactured Housing** 23.127(k)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)
- ▶ **Heavy Equipment** 23.1241(j)
  - ▶ \$1,000 Penalty each month until filed (Tax Lien BPP)

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### Benefits of Collecting Penalties



- ▶ Vehicles/Maintenance
- ▶ Gasoline
- ▶ Professional Development
- ▶ Dues, Courses, Per Diem, Hotels, Conference Registration
- ▶ Copy Machines/Printers
- ▶ Computers
- ▶ Software
- ▶ Salaries

\*\* Expenses you would not mind published on the front page of the news paper!

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# Property Tax Code

- ▶ Relevant code dealing with special inventory specifically is found in §23, Subchapter B of the Texas Property Tax Code
- ▶ Comptroller website  
<https://comptroller.texas.gov/taxes/property-tax/special-inventory.php>

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Thank you VG Young

James Guest  
(832) 725-9587  
Attorney

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