

By: Thierry, Burrows, Noble

H.B. No. 211

Substitute the following for H.B. No. 211:

By: Shine

C.S.H.B. No. 211

A BILL TO BE ENTITLED

1

AN ACT

2 relating to sales and use taxes on e-cigarette vapor products and
3 alternative nicotine products and the computation of taxes imposed
4 on modified risk tobacco products; imposing taxes; reducing the
5 rates of certain taxes imposed on modified risk tobacco products.

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

7 SECTION 1. Subtitle E, Title 2, Tax Code, is amended by
8 adding Chapters 164 and 164A to read as follows:

9 CHAPTER 164. TAX ON E-CIGARETTE VAPOR PRODUCTS AND ALTERNATIVE
10 NICOTINE PRODUCTS

11 Sec. 164.0001. DEFINITIONS. In this chapter:

12 (1) "Alternative nicotine product" means a
13 noncombustible product containing nicotine, but not containing
14 tobacco leaf, that is intended for human consumption, whether
15 chewed, absorbed, dissolved, inhaled, snorted, sniffed, or
16 ingested by any other means. The term does not include an
17 e-cigarette, a vapor product, a product regulated as a drug or
18 device by the United States Food and Drug Administration, or a
19 tobacco product as defined by Section 155.001.

20 (2) "E-cigarette" has the meaning assigned by Section
21 161.081, Health and Safety Code.

22 (3) "Vapor product" means a consumable nicotine liquid
23 solution or other material containing nicotine suitable for use in
24 an e-cigarette.

1 Sec. 164.0002. E-CIGARETTE VAPOR PRODUCT SALES TAX. (a) A
2 tax is imposed on each sale of a vapor product in this state.

3 (b) The tax rate is seven cents for each milliliter or
4 fractional part of a milliliter of vapor product sold.

5 (c) The tax imposed under this section is in addition to the
6 tax imposed under Subchapter C, Chapter 151. The tax imposed under
7 this section does not apply to a sale unless the tax imposed under
8 Subchapter C, Chapter 151, applies to the sale.

9 Sec. 164.0003. E-CIGARETTE VAPOR PRODUCT USE TAX. (a) A
10 tax is imposed on the storage, use, or other consumption in this
11 state of a vapor product purchased from a retailer for storage, use,
12 or other consumption in this state.

13 (b) The tax rate is seven cents for each milliliter or
14 fractional part of a milliliter of vapor product stored, used, or
15 otherwise consumed in this state.

16 (c) The tax imposed under this section is in addition to the
17 tax imposed under Subchapter D, Chapter 151. The tax imposed under
18 this section does not apply to the storage, use, or other
19 consumption of a vapor product unless the tax imposed under
20 Subchapter D, Chapter 151, applies to the storage, use, or other
21 consumption.

22 Sec. 164.0004. ALTERNATIVE NICOTINE PRODUCT SALES TAX. (a)
23 A tax is imposed on each sale of an alternative nicotine product in
24 this state.

25 (b) The tax rate is \$1.22 for each ounce or fractional part
26 of an ounce of alternative nicotine product sold.

27 (c) The computation of the tax under this section is based

1 on the net weight of an alternative nicotine product as listed by
2 the manufacturer.

3 (d) The tax imposed under this section is in addition to the
4 tax imposed under Subchapter C, Chapter 151. The tax imposed under
5 this section does not apply to a sale unless the tax imposed under
6 Subchapter C, Chapter 151, applies to the sale.

7 Sec. 164.0005. ALTERNATIVE NICOTINE PRODUCT USE TAX. (a) A
8 tax is imposed on the storage, use, or other consumption in this
9 state of an alternative nicotine product purchased from a retailer
10 for storage, use, or other consumption in this state.

11 (b) The tax rate is \$1.22 for each ounce or fractional part
12 of an ounce of alternative nicotine product stored, used, or
13 otherwise consumed in this state.

14 (c) The computation of the tax under this section is based
15 on the net weight of an alternative nicotine product as listed by
16 the manufacturer.

17 (d) The tax imposed under this section is in addition to the
18 tax imposed under Subchapter D, Chapter 151. The tax imposed under
19 this section does not apply to the storage, use, or other
20 consumption of an alternative nicotine product unless the tax
21 imposed under Subchapter D, Chapter 151, applies to the storage,
22 use, or other consumption.

23 Sec. 164.0006. APPLICATION OF OTHER PROVISIONS OF CODE.

24 (a) Except as provided by this chapter:

25 (1) the taxes imposed under this chapter are
26 administered, imposed, collected, and enforced in the same manner
27 as the taxes under Chapter 151 are administered, imposed,

1 collected, and enforced; and

2 (2) the provisions of Chapter 151 applicable to the
3 sales tax imposed under Subchapter C, Chapter 151, and the use tax
4 imposed under Subchapter D, Chapter 151, apply to the sales and use
5 taxes imposed under this chapter.

6 (b) A change in the law relating to the taxation of the sale
7 or use of a vapor product or alternative nicotine product under
8 Chapter 151 also applies to the sales or use tax imposed under this
9 chapter.

10 Sec. 164.0007. REPORTS. (a) A person required to file a
11 report under Section 151.403 who is also required to collect or pay
12 a tax under this chapter shall file with the comptroller a report
13 stating:

14 (1) for sales tax purposes, the volume of vapor
15 products and the net weight of alternative nicotine products sold
16 by the seller during the reporting period;

17 (2) for use tax purposes, the volume of vapor products
18 and the net weight of alternative nicotine products sold by the
19 retailer during the reporting period for storage, use, or other
20 consumption in this state;

21 (3) the volume of vapor products and the net weight of
22 alternative nicotine products subject to the use tax that were
23 acquired during the reporting period for storage, use, or other
24 consumption in this state by a purchaser who did not pay the tax to a
25 retailer;

26 (4) the amount of the taxes due under this chapter for
27 the reporting period; and

1 (5) any other information required by the comptroller.

2 (b) The report required by this section for a reporting
3 period is due on the same date that the tax payment for the period is
4 due.

5 Sec. 164.0008. RECORDS. A person required to file a report
6 under Section 151.403 who is also required to collect or pay a tax
7 under this chapter shall keep a complete record of:

8 (1) the volume of vapor products and the net weight of
9 alternative nicotine products sold in this state during each
10 reporting period;

11 (2) the volume of vapor products, including the
12 constituent parts of vapor products, and the net weight of
13 alternative nicotine products purchased from every source during
14 each reporting period;

15 (3) all sales and use taxes, and any money represented
16 to be sales or use tax, collected during each reporting period; and

17 (4) any other information required by the comptroller.

18 Sec. 164.0009. DISPOSITION OF PROCEEDS. The comptroller
19 shall deposit the proceeds from taxes imposed under this chapter in
20 the general revenue fund.

21 CHAPTER 164A. COMPUTATION OF TAX IMPOSED ON CERTAIN PRODUCTS

22 CONTAINING TOBACCO OR NICOTINE

23 Sec. 164A.0001. DEFINITION. In this chapter, "modified
24 risk tobacco product" has the meaning assigned by 21 U.S.C. Section
25 387k(b).

26 Sec. 164A.0002. TAX RATE APPLICABLE TO MODIFIED RISK
27 TOBACCO PRODUCT. The rate of a tax applicable to a modified risk

1 tobacco product for which an order under 21 U.S.C. Section 387k(g)
2 is effective is one-half the rate provided by Section 154.021(b),
3 155.021(b), 155.0211(b) or (c), 164.0002(b), 164.0003(b),
4 164.0004(b), or 164.0005(b) that would otherwise apply to the
5 product, notwithstanding the rates specified by those sections.

6 Sec. 164A.0003. RULES. The comptroller may adopt rules to
7 implement this chapter.

8 SECTION 2. The change in law made by this Act does not
9 affect tax liability accruing before the effective date of this
10 Act. That liability continues in effect as if this Act had not been
11 enacted, and the former law is continued in effect for the
12 collection of taxes due and for civil and criminal enforcement of
13 the liability for those taxes.

14 SECTION 3. This Act takes effect September 1, 2021.