

By: Springer

S.B. No. 339

A BILL TO BE ENTITLED

AN ACT

relating to taxation of electronic nicotine delivery system vapor products and related transactions; imposing taxes.

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

SECTION 1. Subtitle E, Title 2, Tax Code, is amended by adding Chapter 164 to read as follows:

CHAPTER 164. TAX ON ELECTRONIC NICOTINE DELIVERY SYSTEM VAPOR PRODUCTS AND RELATED TRANSACTIONS

Sec. 164.0001. DEFINITIONS. In this chapter:

(1) "Bundled transaction" means a sale of a vapor product and at least one other item:

(A) sold for a single, non-itemized sales price;

or

(B) in which the purchaser receives the vapor product free of charge as a result of purchasing the other item.

(2) "Electronic nicotine delivery system" has the meaning assigned to "e-cigarette" by Section 161.081, Health and Safety Code.

(3) "Vapor product" means a consumable liquid solution, which may or may not contain nicotine, suitable for use in an electronic nicotine delivery system.

Sec. 164.0002. ELECTRONIC NICOTINE DELIVERY SYSTEM VAPOR PRODUCT OR RELATED TRANSACTION SALES TAX. (a) A tax is imposed on each sale in this state of:

1           (1) a vapor product; or

2           (2) the items included in a bundled transaction.

3           (b) The tax rate is 1.5 percent of the sales price of:

4           (1) the vapor product; or

5           (2) the items included in the bundled transaction,  
6 except as provided by Subsection (c).

7           (c) The tax imposed under this section applies only to the  
8 portion of the sales price of a bundled transaction attributable to  
9 vapor products included in the transaction if the seller maintains  
10 books and records identifying that portion through reasonable and  
11 verifiable standards.

12           (d) The tax imposed under this section is in addition to the  
13 tax imposed under Subchapter C, Chapter 151. The tax imposed under  
14 this section does not apply to a sale unless the tax imposed under  
15 Subchapter C, Chapter 151, applies to the sale.

16           Sec. 164.0003. ELECTRONIC NICOTINE DELIVERY SYSTEM VAPOR  
17 PRODUCT OR RELATED TRANSACTION USE TAX. (a) A tax is imposed on the  
18 storage, use, or other consumption in this state of:

19           (1) a vapor product purchased from a retailer for  
20 storage, use, or other consumption in this state; or

21           (2) the items included in a bundled transaction  
22 purchased from a retailer for storage, use, or other consumption in  
23 this state.

24           (b) The tax rate is 1.5 percent of the sales price of:

25           (1) the vapor product stored, used, or otherwise  
26 consumed in this state; or

27           (2) the items included in the bundled transaction

1 stored, used, or otherwise consumed in this state, except as  
2 provided by Subsection (c).

3 (c) The tax imposed under this section applies only to the  
4 portion of the sales price of a bundled transaction attributable to  
5 vapor products included in the transaction if the seller maintains  
6 books and records identifying that portion through reasonable and  
7 verifiable standards.

8 (d) The tax imposed under this section is in addition to the  
9 tax imposed under Subchapter D, Chapter 151. The tax imposed under  
10 this section does not apply to the storage, use, or other  
11 consumption of a vapor product unless the tax imposed under  
12 Subchapter D, Chapter 151, applies to the storage, use, or other  
13 consumption.

14 Sec. 164.0004. DISCLOSURE OF TAX. A seller or retailer that  
15 makes a sale of a vapor product or of items included in a bundled  
16 transaction shall provide on the sales invoice, billing, or other  
17 receipt provided to the purchaser:

18 (1) a separate statement of the amount of tax imposed  
19 under this chapter on the vapor product or items included in the  
20 bundled transaction; or

21 (2) a statement of the combined amount of taxes  
22 imposed under this chapter and Chapter 151 on the vapor product or  
23 items included in the bundled transaction.

24 Sec. 164.0005. APPLICATION OF OTHER PROVISIONS OF CODE.

25 (a) Except as provided by this chapter:

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

1 as the taxes under Chapter 151 are administered, imposed,  
2 collected, and enforced; and

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

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

10 Sec. 164.0006. 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 amount of total  
15 receipts from vapor products and items included in bundled  
16 transactions sold by the seller during the reporting period;

17 (2) for use tax purposes, the amount of total receipts  
18 from vapor products and items included in bundled transactions sold  
19 by the retailer during the reporting period for storage, use, or  
20 other consumption in this state;

21 (3) the amount of the total sales prices of vapor  
22 products and items included in bundled transactions subject to the  
23 use tax that were acquired during the reporting period for storage,  
24 use, or other consumption in this state by a purchaser who did not  
25 pay the tax to a 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. 164.0007. RECORDS. (a) A person required to file a  
6 report under Section 151.403 who is also required to collect or pay  
7 a tax under this chapter shall keep a complete record of:

8           (1) all gross receipts from each sale to which this  
9 chapter applies occurring during each reporting period, along with  
10 documentation relating to those receipts;

11           (2) all purchases of vapor products and items included  
12 in bundled transactions from every source during each reporting  
13 period, along with documentation relating to those purchases;

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

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

18           (b) A person shall keep the records required by Subsection  
19 (a) for the period required by Section 151.025(b).

20           Sec. 164.0008. DISPOSITION OF PROCEEDS. The comptroller  
21 shall deposit the proceeds from taxes imposed under this chapter to  
22 the credit of the general revenue fund.

23           SECTION 2. This Act takes effect September 1, 2023.