

BILL ANALYSIS

C.S.H.B. 2424
By: McCall
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As the principal administrator of tax collection and revenue management, the Comptroller's office relies on its rulemaking authority to facilitate the performance of its duties. Over time, the agency relies on some policies with such frequency that it becomes necessary to codify those policies. The agency's pivotal role in the administration of state funds requires the Comptroller to remain actively involved in the enforcement of every code of the law. Close interaction with every aspect of the law provides the Comptroller's office with an appreciable advantage in modifying or correcting many portions of state law. C.S.H.B. 2424 codifies policies, facilitates enforcement, and makes technical corrections to state law, thus maximizing the agency's resources.

RULEMAKING AUTHORITY

This bill grants the comptroller additional rulemaking authority in SECTION 13.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Section 161.122, Health and Safety Code, adding Subsection (f), stating that a person commits a Class C misdemeanor if the person places or authorizes the placement of a tobacco advertisement within 1,000 feet of a church or school. This section adds a penalty to what was already unlawful.

SECTION 2. Amends Article 1.16(b), Insurance Code, placing the same examination fee tax credit limitations for domestic insurance companies on foreign insurance companies.

SECTION 3. Amends Section 1, Article 4.10, Insurance Code, inserting the term "interinsurance," which relates to the insuring of one insurance company by another. The state taxes this type of transaction as referred to in the Tax Code. This section simply makes the reference in the regulatory statute in the Insurance Code.

SECTION 4. Amends Section 13, Article 4.10, Insurance Code, placing the same examination and evaluation fee tax credit limitations for domestic insurance companies on foreign insurance companies.

SECTION 5. Amends Section 8, Article 4.11, Insurance Code, placing the same examination and evaluation fee tax credit limitations for domestic life, accident and health insurance companies on foreign companies providing the same products.

SECTION 6. Amends Article 4.17(a), Insurance Code, by codifying agency policy in expressly stating that a qualifying single nonprofit trust is excluded from gross premiums receipts tax.

SECTION 7. Amends Section 7, Article 9.59, Insurance Code, placing the same examination and evaluation fee tax credit limitations for domestic insurance companies on foreign insurance companies.

SECTION 8. Amends Article 20A.33(d), Insurance Code, by codifying existing agency policy of excluding single nonprofit trusts (established to provide coverage for employees of a municipality, county, or hospital districts) from maintenance tax premiums. This section is similar to Section 6 except this section addresses HMO's.

SECTION 9. Amends Section 101.053(b), Insurance Code, inserting language stating that independently procured insurance tax applies only to policies purchased from an insurance company not licensed in Texas.

SECTION 10. Amends Section 912.002(b), Insurance Code, by codifying existing agency policy that county mutual insurance companies are subject to the Office of Public Insurance Counsel (OPIC) assessment.

SECTION 11. Amends Section 376.470, Local Government Code, adding Subsection (d), stating that the sales and use taxes collected by the Aldine Community Improvement District are imposed, computed, and administrated in accordance with the Chapter 321, Tax Code (Municipal Sales and Use Tax Act).

SECTION 12. Amends Section 2153.153(a), Occupations Code, by allowing the comptroller to accept personal checks or other methods of payment for annual licenses issued for coin-operated machines.

SECTION 13. Amends Section 111.0046, Tax Code, allowing the comptroller to set, by rule, the age limit of a tax permit holder.

SECTION 14. Amends Section 111.012, Subsections (a) and (g), Tax Code, allowing the comptroller to require a security for tax payment from a non-delinquent taxpayer.

SECTION 15. Amends Section 113.006(b), Tax Code, allowing the comptroller to file one tax lien to cover all taxes for which the taxpayer is delinquent to the state.

SECTION 16. Amends Section 151.0035, Tax Code, codifying a current policy and clarifying that data storage does not include classified advertisements, banner advertisements, vertical advertisements, or links when these items are displayed on an Internet web page.

SECTION 17. Amends Section 151.005, Tax Code, codifying existing policy of taxing warranty services (taxable repair of tangible personal property).

SECTION 18. Amends Section 151.056, Tax Code, codifying a 30-plus year agency policy of not allowing contractors who make improvements to realty to claim a manufacturing exemption.

SECTION 19. Amends Section 151.313(a), Tax Code, codifying existing policy, exempting intravenous systems, supplies and replacement parts used in the treatment of humans from taxation.

SECTION 20. Amends Section 151.314(e), Tax Code, allowing parents of children who are members of a qualifying non-profit organization to work concession stands on behalf of the organization without losing the tax exemption currently provided for those kinds of sales.

SECTION 21. Amends Section 151.319(f), Tax Code, raising the price limit within the definition of newspaper—an item that is tax exempt—from 75 cents to \$1.50.

SECTION 22. Amends Section 151.323, Tax Code, clarifying that the federal Mobile Telecommunications Act, codified in Section 151.061 of the Tax Code, is the governing statute when taxpayers seek tax exemptions for mobile telecommunication services under Section 151.323.

SECTION 23. Amends Section 151.3501, Tax Code, codifying comptroller policy to exempt labor to repair or restore buildings that are listed in the National Register of Historic places from taxation.

SECTION 24. Amends Section 151.355, Tax Code, codifying existing tax policy requiring that equipment purchased for various types of rainwater harvesting, desalination, precipitations enhancement, regional water and wastewater systems, and partnerships of public and private entities to construct or operate regional water supply or waste water systems must be used solely for those purposes in order to be exempt from sales tax.

SECTION 25. Amends Section 152.086(a), Tax Code, establishing a two-year period in which an orthopaedically handicapped person must make modifications to a vehicle for one's transportation in order to receive a motor vehicle sales tax exemption.

SECTION 26. Amends Section 152.106, Tax Code, making the advertisement of payment or absorption of taxes by a car dealer a Class C misdemeanor.

SECTION 27. Amends Section 153.013(a), Tax Code, inserting language pertaining to the dyed diesel bonded user and agricultural bonded user permits. The language was left out inadvertently in prior legislative sessions when this statute was amended.

SECTION 28. Amends Section 153.117, Tax Code, adding Subsection (i), requiring the same reporting information to be submitted for diesel tax refund claims as gasoline tax refund claims (e.g., inventory purchased or received, used, lost, etc.).

SECTION 29. Amends Section 153.120, Tax Code, codifying existing policy by delineating what information a bulk user of fuels must maintain in its fuel distribution log.

SECTION 30. Amends Section 153.205, Tax Code, reenacting two conflicting bills passed in 2001 to reconcile the provisions dealing with a signed statement of purchase for fuel.

SECTION 31. Amends Section 153.208(d), Tax Code, adding public school districts and commercial transportation companies that provide public transportation to school districts, that are exempted from motor fuels taxation, to this portion of the code for consistency.

SECTION 32. Amends Section 153.219(c), Tax Code, requiring bulk users of diesel to provide a distribution log when claiming a refund of diesel tax, identical to what is required of bulk gasoline users claiming a refund of gasoline tax.

SECTION 33. Amends Section 153.222(a), Tax Code, providing consistency in how the gasoline and diesel tax are administered. This Section takes language from the gasoline tax references and inserts it in the diesel tax portion of the code.

SECTION 34. Amends Section 153.223, Tax Code, adding Subsection (d), so that, like in Section 29, the code delineates what information a bulk user of diesel fuel must keep in a distribution log to support a refund claim for diesel tax.

SECTION 35. Amends Section 153.403, Tax Code, by deleting ambiguous language so that it is clear that dyed diesel fuel shall not be used to operate a motor vehicle on a public highway unless specifically authorized by law.

SECTION 36. Amends Section 156.051(a), Tax Code, raising the threshold at which hotel tax is due from \$2 per day to \$15 per day, protecting indigent persons from having to pay hotel tax at certain hostels, shelters, etc.

SECTION 37. Amends Section 156.102(b), Tax Code, by reinserting the word "Texas" into a part of the code dealing with a hotel tax exemption for public or private institutions of higher education. "Texas" was deleted thus changing the original intent of the exemption.

SECTION 38. Amends Section 156, Tax Code, adding Section 156.104, allowing a hotel to demonstrate why a hotel tax exemption was granted without requiring the recipient of the exemption to provide an exemption certificate. This change allows a hotel to accept an exemption certificate in good faith if the hotel can provide other documents required by the comptroller to support the exemption. It also requires that the comptroller create and maintain a list of exempt organizations so that hotels can verify whether a customer is indeed exempt from the hotel tax.

SECTION 39. Amends Section 171.001(a), Tax Code, making conforming changes required by *Rylander v. Bandag Licensing*, a case that prohibits the taxation of foreign corporations holding a certificate of authority in Texas but not conducting business in this state.

SECTION 40. Amends Section 171.001(b)(2), Tax Code, making conforming changes required by *Rylander v. Bandag Licensing*, deleting the beginning date of taxation for certain foreign companies.

SECTION 41. Amends Section 171.052, Tax Code, deleting superfluous language that confuses the intent of the statute to exempt insurance companies that pay premium taxes from paying franchise taxes.

SECTION 42. Amends Section 171.084(c), clarifying that lessees at the Dallas Trade Market are exempt from the franchise tax as provided by this section.

SECTION 43. Amends Section 171.1032(b), Tax Code, codifying existing policy stating that dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus.

SECTION 44. Amends Section 171.1051(c), Tax Code, codifying existing policy stating that dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus.

SECTION 45. Amends Section 171.106, Tax Code, adding Subsection (i), placing the franchise tax exemption language for enterprise zones found in Chapter 151 of the Tax Code in Chapter 171.

SECTION 46. Amends Section 171.109, Tax Code, adding Subsection (a-1), clarifying that a corporation can exclude a debt from taxable capital if the debt is a sum and time certain, legally enforceable obligation.

SECTION 47. Amends Section 171.110, Tax Code, amending Subsection (a) and adding Subsections (k) and (l), codifying existing policy stating that dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus and defining terms.

SECTION 48. Amends Section 171.110(b) and (c), Tax Code, codifying an agency rule allowing the exclusion of corporate officer and director compensation from earned surplus only if the corporation or any parent corporations have less than 35 shareholders.

SECTION 49. Amends Section 171.203, Tax Code, adding Subsection (f), eliminating the signature requirement on Public Information Reports if a corporation files the report electronically.

SECTION 50. Amends Subchapter O, Chapter 171, Tax Code, by adding Section 171.731, prohibiting the transfers of research and development credits from one corporation to another corporation, as is the case with all other franchise tax credits.

SECTION 51. Amends Section 171.751(1), Tax Code, adding cotton ginning to the definition of "agricultural processing," allowing businesses that are in agricultural processing (including cotton ginning) to qualify for certain franchise tax credits as provided for in current law.

SECTION 52. Amends Subchapter P, Chapter 171, Tax Code, by adding Section 171.7515, expanding

the definition of “qualified business.”

SECTION 53. Amends Section 171.753, Tax Code, by consolidating the provisions of this section and Section 171.754, dealing with the job creation credit taken by enterprise zone projects.

SECTION 54. Amends Subchapter P, Chapter 171, Tax Code, by adding Section 171.7541, restating the provisions of H.B. 2686, 77th Legislative Session, which provides tax incentives for business investments in certain enterprise zones. Also specifies that credit accrues for enterprise projects or defense readjustment projects on or after September 1, 2001, beginning on the date that projects are designated as such. Allows corporations to claim the entire credit accrued on reports originally due on or after September 1, 2003, and before January 1, 2006.

SECTION 55. Amends Section 171.802, Tax Code, adding Subsection (d), inserting language inadvertently left out in 2001. The term “qualified business” is included so that certain businesses could qualify for the franchise tax credit under standards set out by the Government Code even if all standards in the Tax Code are not met.

SECTION 56. Amends Section 171.803, Tax Code, by placing the same provisions regarding tax incentives for business investments in certain enterprise zones.

SECTION 57. Amends Section 171.804(b), Tax Code, by modifying the time period during which a corporation designated as an enterprise project or as a defense readjustment project may claim credit for qualifying jobs.

SECTION 58. Amends Section 171.853(c), Tax Code, stating that credits claimed for the period for which credit can accrue may not exceed 50 percent of franchise taxes due, before any other applicable tax credits.

SECTION 59. Amends Chapter 171, Tax Code, by creating a new Subchapter U, providing title insurance companies a credit for franchise taxes.

SECTION 60. Amends Section 201.057(c), Tax Code, removing cut-off dates in the statute.

SECTION 61. Amends Section 202.054(c), Tax Code, removing cut-off dates in the statute.

SECTION 62. Amends Subchapter B, Chapter 321, Tax Code, by adding Section 321.107, inserting language into the code requiring (as is current practice) all local sales and use taxes to be imposed, computed, and administered according to the provisions of the Tax Code (Municipal Sales and Use Tax Act).

SECTION 63. Amends Section 321.203(j), Tax Code, stating that the sale of services delivered via cable is consummated at the point of delivery to the customer.

SECTION 64. Amends Section 322.001(a), Tax Code, requiring that taxes imposed by Coordinated County Transportation Authorities to be imposed, computed, and administered according to the provisions of the Tax Code (Special Purpose Districts).

SECTION 65. Amends Section 322.002(1), Tax Code, reiterating the provision of Section 64, defining Coordinated County Transportation Authorities as taxing entities. Also, municipal transit departments created under Chapter 451 and 452 of the Transportation Code are defined as taxing entities.

SECTION 66. Amends Section 323.203(j), Tax Code, stating that the sale of services delivered via cable systems is consummated at the point of delivery to the consumer.

SECTION 67. This section repeals all unnecessary language, redundant provisions, and conflicting

sections that have been reconciled or consolidated.

SECTION 68. This section identifies sections that are clarifications of existing law.

SECTION 69. Prevailing Clause.

SECTION 70. Effective dates.

COMPARISON OR ORIGINAL TO SUBSTITUTE

The introduced version of H.B. 2424 contained several references to sections of the Insurance Code that were re-codified. The committee substitute references the correct sections in the Insurance Code. The committee substitute inserts language relating to tax exemptions taken by merchants at certain trade shows. The substitute also adds provisions relating to tax credits for corporations designated as enterprise projects or defense readjustment projects. The substitute also makes non-substantive corrections to the bill.