

Amend **CSHB 3540** by adding the following appropriately numbered Articles and renumbering subsequent Articles accordingly:

ARTICLE __. POWERS AND DUTIES OF COMPTROLLER AND PROVISIONS

RELATED TO TAXES COLLECTED BY THE COMPTROLLER OR LOCAL ENTITIES

SECTION __.01. Section 442.015, Government Code, is amended by adding Subsection (h) to read as follows:

(h) The comptroller may manage the assets of the Texas preservation trust fund account in the same manner as the comptroller may manage the assets of certain permanent funds under Section 403.1068.

SECTION __.02. Section 552.025(c), Government Code, is amended to read as follows:

(c) Subchapter C does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority, provided that, to preserve taxpayer confidentiality, a governmental body with taxing authority shall remove any information that identifies a taxpayer from the letter, memorandum, or ruling.

SECTION __.03. Section 285.063, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION __.04. Section 775.0753, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION __.05. Section 776.0753, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The district shall submit to the comptroller a

description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held as provided by this subchapter.

SECTION __.06. Article 1.16(b), Insurance Code, is amended to read as follows:

(b) Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses and expenses provided by Section 803.007 [~~Article 1.28~~] of this Code shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force shall be assessed annually for each such corporation or association. In computing the assessments, the board may not consider insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.). The amount of all examination and evaluation fees paid in each taxable year to the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due [~~under this article~~]. The limitations provided by Sections 803.007(1) and

(2)(B) of this code for domestic insurance companies apply to foreign insurance companies.

SECTION __.07. Section 222.002(b), Insurance Code, is amended to read as follows:

(b) Except as otherwise provided by this section, in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues, the insurer or health maintenance organization shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups [~~a person~~] located in this state and arising from the business of a health maintenance organization or the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, life, health, and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection.

SECTION __.08. Section 223.003(a), Insurance Code, is amended to read as follows:

(a) An annual tax is imposed on all [~~each title insurance company that receives~~] premiums from the business of title insurance. The rate of the tax is 1.35 percent of [~~the~~] title insurance [~~company's~~] taxable premiums for a calendar year, including any premiums retained by a title insurance agent as provided by Section 223.005. For purposes of this chapter, a person engages in the business of title insurance if the person engages in an activity described by Section 2501.005.

SECTION __.09. Section 252.003, Insurance Code, is amended to read as follows:

Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums [~~collected~~] from writing insurance in this state against loss or damage by:

- (1) bombardment;

- (2) civil war or commotion;
- (3) cyclone;
- (4) earthquake;
- (5) excess or deficiency of moisture;
- (6) explosion as defined by Article 5.52;
- (7) fire;
- (8) flood;
- (9) frost and freeze;
- (10) hail;
- (11) insurrection;
- (12) invasion;
- (13) lightning;
- (14) military or usurped power;
- (15) an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe;
- (16) rain;
- (17) riot;
- (18) the rising of the waters of the ocean or its tributaries;
- (19) smoke or smudge;
- (20) strike or lockout;
- (21) tornado;
- (22) vandalism or malicious mischief;
- (23) volcanic eruption;
- (24) water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers;
- (25) weather or climatic conditions; ~~[ex]~~
- (26) windstorm;
- (27) an event covered under a home warranty insurance policy; or
- (28) an event covered under an inland marine insurance policy.

SECTION __.10. Section 271.002(a), Insurance Code, is amended to read as follows:

- (a) A maintenance fee is imposed on all ~~[each insurer with~~

~~gross~~] premiums subject to assessment under Section 271.006.

SECTION __.11. Section 1502.053, Insurance Code, is amended to read as follows:

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The issuer of a [A] children's health benefit plan approved under Section 1502.051 [issuer] is not subject to the premium tax or the tax on revenues imposed under Chapter 222 with respect to money received for coverage provided under that plan.

(b) The issuer of a children's health benefit plan is not subject to the retaliatory tax imposed under Chapter 281 with respect to money received for coverage provided under that plan.

SECTION __.12. Section 383.101, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION __.13. Section 387.012, Local Government Code, is amended to read as follows:

Sec. 387.012. EFFECTIVE DATE OF TAX. (a) The adoption of the tax, the change of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.

(b) The district shall submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this chapter.

SECTION __.14. Section 111.009, Tax Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) A person having a direct interest in a determination may petition the comptroller for a redetermination and may assert legal and factual grounds to challenge the assessment.

(e) The person filing the petition may assert credits or claim a refund for the same tax type and same period. The assertion for the credits or the claim for the refund must be included in the petition or must be filed within the applicable limitations period, except as otherwise provided by this section. The comptroller shall adopt procedural rules that ensure that redetermination proceedings are expeditiously finalized and that provide that all parties receive equal time to prepare and submit their positions before the hearing.

(f) A credit or refund for the same tax type and same period may be asserted or claimed in the redetermination proceeding for all issues if the credit is asserted or the refund is claimed not later than the first anniversary of the date the petition for redetermination is filed. This subsection does not authorize a filing for a separate credit or refund that is not authorized under Section 111.107(b).

SECTION __.15. Section 111.016, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The comptroller may assess the responsible individual liable under Subsection (b) at any time before the first anniversary of the later of:

(1) the date the tax liability of the corporation, association, limited liability company, limited partnership, or other legal entity becomes final; or

(2) the date the bankruptcy proceeding is closed or dismissed.

(f) An individual that the comptroller asserts is liable for the payment of tax or other money under this section as a responsible individual is entitled to:

(1) reasonable notice from the comptroller that specifies the basis for that assertion and the amount of tax or money for which the comptroller asserts the individual is liable; and

(2) contest that assertion in a manner consistent with the remedies available to taxpayers under this title.

SECTION __.16. Subchapter B, Chapter 111, Tax Code, is amended by adding Section 111.0515 to read as follows:

Sec. 111.0515. RESTRICTED OR CONDITIONAL PAYMENTS OF TAXES, PENALTIES, AND INTEREST PROHIBITED. Unless the restriction or condition is authorized by this title, a restriction or condition placed on a check in payment of taxes by the maker of the check that purports to limit the amount of taxes owed to an amount less than that stated in the comptroller's records, or a restriction or condition placed on a check in payment of penalties and interest on delinquent taxes by the maker that purports to limit the amount of the penalties and interest to an amount less than the amount of penalties and interest accrued on the delinquent taxes, is void.

SECTION __.17. Subchapter B, Chapter 111, Tax Code, is amended by adding Section 111.065 to read as follows:

Sec. 111.065. EXPEDITIOUS ASSISTANCE FOR TAXPAYERS. (a) As expeditiously as possible, the comptroller shall:

(1) refund or credit any amount of tax overpaid by a person; and

(2) correct any erroneous assessment.

(b) The comptroller shall amend any audit or the records of any audit period as expeditiously as possible if necessary to comply with Subsection (a).

SECTION __.18. Section 111.107, Tax Code, is amended to read as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. (a) Except as otherwise expressly provided, a person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 and the refund is made or the credit is issued under a court order;

(2) under the provision of Section 111.104(c)(3) applicable to a refund claim filed after a jeopardy or deficiency determination becomes final; or

(3) under Chapter 162 ~~[153]~~, except Section 162.126(f), 162.128(d), 162.228(f), or 162.230(d) ~~[153.1195(e), 153.121(d), 153.2225(e), or 153.224(d)]~~.

(b) A person may not refile a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller in a refund hearing.

SECTION __.19. Section 151.006, Tax Code, is amended to read as follows:

Sec. 151.006. "SALE FOR RESALE". "Sale for resale" means a sale of:

(1) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of reselling it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property or taxable service;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America or in the United Mexican States as an integral part of a taxable service; or

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service.

SECTION __.20. Section 151.011(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (c) [~~of this section~~], "use" means the exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property, including tangible personal property other than printing [~~printed~~] material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state, and, except as

provided by Section 151.056(b) [~~of this code~~], includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

SECTION __.21. Section 151.3111(b), Tax Code, is amended to read as follows:

(b) Subsection (a) does not apply to the performance of a service on:

(1) tangible personal property that would be exempted solely because of the exempt status of the seller of the property;

(2) tangible personal property that is exempted solely because of the application of Section 151.303, 151.304, or 151.306;

(3) motor vehicles, trailers, or semitrailers as defined, taxed, or exempted by Chapter 152; [~~or~~]

(4) a taxable boat or motor as defined by Section 160.001; [~~+~~]

(5) tangible [~~(6) Tangible~~] personal property exempt under Section 151.326; or

(6) through December 31, 2007, tangible personal property that is exempted solely because of the application of Section 151.3162.

SECTION __.22. Sections 151.3162(d) and (e), Tax Code, are amended to read as follows:

(d) The exemption provided by Subsection (b) takes effect January 1, 2008. Until that date, a person is entitled to an exemption [~~a credit or refund~~] of a portion of the taxes paid under this chapter on an item that after January 1, 2008, will be exempted from the taxes imposed by this chapter under Subsection (b). The amount of the exemption [~~credit or refund~~] is determined as follows:

(1) for an item for which the taxable event occurs on or after October 1, 2001, and before January 1, 2004, the taxpayer is entitled to an exemption [~~a refund or credit~~] in an amount equal to 33 percent of the tax paid on the item;

(2) for an item for which the taxable event occurs on or after January 1, 2004, and before January 1, 2006, the taxpayer is entitled to an exemption [~~a refund or credit~~] in an amount equal

to 50 percent of the tax paid on the item; and

(3) for an item for which the taxable event occurs on or after January 1, 2006, and before January 1, 2008, the taxpayer is entitled to an exemption ~~[a refund or credit]~~ in an amount equal to 75 percent of the tax paid on the item.

(e) A taxpayer entitled to a credit or refund under Subsection (d), as that subsection existed on September 30, 2005, may elect to receive either a credit or a refund. A taxpayer who elects to receive a credit must claim the credit on the return for a period that ends not later than the first anniversary of the date on which the taxable event occurred. A taxpayer who elects to receive a refund must apply to the comptroller for the refund before or during the calendar year following the year in which the tax on the item was paid.

SECTION __.23. Section 151.419(b), Tax Code, is amended to read as follows:

(b) The application must be accompanied with:

(1) an agreement that is signed by the applicant or a responsible officer of an applicant corporation, that is in a form prescribed by the comptroller, and that provides that the applicant agrees to:

(A) accrue and pay all taxes imposed by Subchapter D ~~[of this chapter]~~ on the storage and use of all taxable items sold to or leased or rented by the permit holder unless the items are exempted from the taxes imposed by this chapter; and

(B) pay the imposed taxes monthly on or before the 20th day of the month following the end of each calendar month; ~~[and~~

~~[(C) waive the discount permitted by Section 151.423 of this code on the payment of all taxes under the direct payment permit only,]~~

(2) a description, in the amount of detail that the comptroller requires, of the accounting method by which the applicant proposes to differentiate between taxable and exempt transactions; and

(3) records establishing that the applicant is a responsible person who annually purchases taxable items that have a

value when purchased of \$800,000 or more excluding the value of taxable items for which resale certificates were or could have been given.

SECTION __.24. Sections 151.424(a) and (c), Tax Code, are amended to read as follows:

(a) A taxpayer who prepays the taxpayer's tax liability on the basis of a reasonable estimate of the tax liability for a quarter in which a prepayment is made or for a month in which a prepayment is made may deduct and withhold 1.25 percent of the amount of the prepayment [~~in addition to the amount permitted to be deducted and withheld under Section 151.423 of this code~~]. A reasonable estimate of the tax liability must be at least 90 percent of the tax ultimately due or the amount of tax paid in the same quarter, or month, if a monthly prepayer, in the last preceding year. Failure to prepay a reasonable estimate of the tax will result in the loss of the entire prepayment discount.

(c) A taxpayer who prepays the tax liability as permitted by this section must file a report when due as provided by this chapter. The amount of a prepayment made by a taxpayer under this section shall be credited against the amount of actual tax liability of the taxpayer as shown on the tax report of the taxpayer. If there is a tax liability owed by the taxpayer in excess of the prepayment credit, the taxpayer shall send to the comptroller the remaining tax liability at the time of filing the quarterly or monthly report. [~~The taxpayer is entitled to the deduction permitted under Section 151.423 of this code on the amount of the remaining tax liability.~~]

SECTION __.25. Section 151.425, Tax Code, is amended to read as follows:

Sec. 151.425. FORFEITURE OF DISCOUNT OR REIMBURSEMENT. If a taxpayer fails to file a report required by this chapter when due or to pay the tax when due, the taxpayer forfeits any claim to a [~~deduction or~~] discount allowed under [~~Section 151.423 or~~] Section 151.424 [~~of this code~~].

SECTION __.26. Section 151.428(c), Tax Code, is amended to read as follows:

(c) The reporting, collection, refund, and penalty

provisions of this chapter and Subtitle B ~~[of this title]~~ apply to the payments required by this section, except that Section ~~[Sections 151.423 and]~~ 151.424 does ~~[of this code do]~~ not apply to this section.

SECTION __.27. Section 152.047(a), Tax Code, is amended to read as follows:

(a) Except as inconsistent with this chapter and rules adopted under this chapter, the seller of a motor vehicle shall report and pay the tax imposed on a seller-financed sale to the comptroller on the seller's receipts from seller-financed sales in the same manner as the sales tax is reported and paid by a retailer under Sections 151.401, 151.402, 151.405, 151.406, 151.409, ~~[151.423,]~~ 151.424, and 151.425.

SECTION __.28. Section 152.123(b), Tax Code, is amended to read as follows:

(b) The county shall retain the following percentage of the amounts calculated under Subsection (a) during each of the following fiscal years:

(1) ~~[in fiscal year 2006, 10 percent,~~
~~(2) in fiscal year 2007, 20 percent,~~
~~(3)]~~ in fiscal year 2008, 30 percent;
(2) ~~(4)~~ in fiscal year 2009, 40 percent;
(3) ~~(5)~~ in fiscal year 2010, 50 percent;
(4) ~~(6)~~ in fiscal year 2011, 60 percent;
(5) ~~(7)~~ in fiscal year 2012, 70 percent;
(6) ~~(8)~~ in fiscal year 2013, 80 percent;
(7) ~~(9)~~ in fiscal year 2014, 90 percent; and
(8) ~~(10)~~ in fiscal year 2015 and succeeding years, 100 percent.

SECTION __.29. Sections 156.151(a) and (b), Tax Code, are amended to read as follows:

(a) Except as provided by Section 156.1515, a ~~[A]~~ person required to collect the tax imposed by this chapter shall pay the comptroller the tax collected during the preceding reporting period and at the same time shall file with the comptroller a report stating:

(1) the total amount of the payments made for rooms at

the person's hotel during the preceding reporting period;

(2) the amount of the tax collected by the person during the preceding reporting period; and

(3) other information that the comptroller requires to be in the report.

(b) Except as provided by Subsection (c) and Section 156.1515, each calendar month is a reporting period and the taxes imposed by and collected under this chapter are due and payable to the comptroller on or before the 20th day of the month following the end of each calendar month.

SECTION __.30. (a) Subchapter D, Chapter 156, Tax Code, is amended by adding Section 156.1515 to read as follows:

Sec. 156.1515. MONTHLY PREPAYMENTS. (a) A taxpayer required to pay taxes monthly under Section 156.151(b) shall make monthly prepayments of taxes under this chapter based on a reasonable estimate of tax liability. The taxpayer shall make the prepayment not later than the 20th day of the month for which the prepayment is made.

(b) The taxpayer is entitled to the reimbursement authorized by Section 156.153 on the timely prepayment of taxes under this section, except that failure to prepay a reasonable estimate of the tax will result in a loss of the entire amount of the reimbursement.

(c) A prepayment made under this section is not considered to be based on a reasonable estimate of tax liability if the payment is less than:

(1) 90 percent of the total tax ultimately due for the month for which the prepayment is made; or

(2) the amount of tax paid for the same month of the previous year, if the taxpayer paid taxes for that month.

(d) A taxpayer who is required to prepay taxes under this section must file a report when due as provided by Section 156.151. The amount of the prepayment shall be credited against the amount of the taxpayer's actual tax liability as shown on the report.

(e) If there is tax liability owed by the taxpayer in excess of the prepayment credit, the taxpayer shall send to the comptroller the remaining tax liability as provided by Section

156.151(b). The taxpayer is entitled to the reimbursement authorized by Section 156.153 only on the amount of the remaining tax liability.

(f) If the amount prepaid under this section exceeds the amount of the taxpayer's actual tax liability, the excess of the prepayment shall be credited against future tax liability or refunded to the taxpayer as provided by Subchapter C, Chapter 111.

(b) This section applies only to taxes imposed on or after August 1, 2007. Taxes imposed before that date are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose. The first prepayment required by Section 156.1515, Tax Code, as added by this section is due not later than August 20, 2007.

SECTION __.31. Section 162.114(c), Tax Code, is amended to read as follows:

(c) The return required by this section shall be accompanied by a payment for the amount of tax reported due after any prepayment of taxes under Section 162.1145.

SECTION __.32. (a) Subchapter B, Chapter 162, Tax Code, is amended by adding Section 162.1145 to read as follows:

Sec. 162.1145. MONTHLY PREPAYMENTS. (a) A license holder required to pay taxes monthly under Section 162.114(a) shall make monthly prepayments of the taxes under this subchapter based on a reasonable estimate of tax liability. The license holder shall make the prepayment not later than the 25th day of the month for which the prepayment is made.

(b) A supplier or permissive supplier is entitled to the deduction allowed by Section 162.116(b) on the timely prepayment of taxes under this section, except that failure to prepay a reasonable estimate of the tax will result in a loss of the entire amount of the deduction.

(c) A prepayment made under this section is not considered to be based on a reasonable estimate of tax liability if the payment is less than:

(1) 90 percent of the total tax liability ultimately due for the month for which the prepayment is made; or

(2) the amount of tax paid in the same month of the

previous year, if the license holder paid taxes for that month.

(d) A license holder who is required to prepay taxes under this section must file a return when due as provided by Section 162.114. The amount of a prepayment shall be credited against the amount of the license holder's actual tax liability as shown on the return.

(e) If there is tax liability owed by the license holder in excess of the prepayment credit, the license holder shall send to the comptroller the remaining tax liability as provided by Section 162.114. A supplier or permissive supplier is entitled to the deduction allowed by Section 162.116(b) only on the amount of the remaining tax liability.

(f) If the amount prepaid under this section exceeds the amount of the license holder's actual tax liability, the excess of the prepayment may be credited against future tax liability within the limitation period provided by Section 162.128.

(b) This section applies only to taxes imposed on or after August 1, 2007. Taxes imposed before that date are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose. The first prepayment required by Section 162.1145, Tax Code, as added by this section is due not later than August 25, 2007.

SECTION __.33. Section 162.215(c), Tax Code, is amended to read as follows:

(c) The return required by this section shall be accompanied by a payment for the amount of tax reported due after any prepayment of taxes under Section 162.2155.

SECTION __.34. (a) Subchapter C, Chapter 162, Tax Code, is amended by adding Section 162.2155 to read as follows:

Sec. 162.2155. MONTHLY PREPAYMENTS. (a) A license holder who is required to pay taxes monthly under Section 162.215(a) shall make monthly prepayments of the taxes under this subchapter based on a reasonable estimate of tax liability. The license holder shall make the prepayment not later than the 25th day of the month for which the prepayment is made.

(b) A supplier or permissive supplier is entitled to the deduction allowed by Section 162.217(b) on the timely payment of

tax under this section, except that failure to prepay a reasonable estimate of the tax will result in a loss of the entire amount of the deduction.

(c) A prepayment made under this section is not considered to be based on a reasonable estimate of tax liability if the payment is less than:

(1) 90 percent of the tax ultimately due for the month for which the prepayment is made; or

(2) the amount of tax paid in the same month of the previous year, if the license holder paid taxes for that month.

(d) A license holder who is required to prepay taxes under this section must file a return when due as provided by Section 162.215. The amount of a prepayment shall be credited against the amount of the license holder's actual tax liability as shown on the return.

(e) If there is tax liability owed by the license holder in excess of the prepayment credit, the license holder shall send to the comptroller the remaining tax liability as provided by Section 162.215. A supplier or permissive supplier is entitled to the deduction allowed by Section 162.217(b) only on the amount of the remaining tax liability.

(f) If the amount prepaid under this section exceeds the amount of the license holder's actual tax liability, the excess of the prepayment may be credited against future tax liability within the limitation period provided by Section 162.230.

(b) This section applies only to taxes imposed on or after August 1, 2007. Taxes imposed before that date are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose. The first prepayment required by Section 162.2155, Tax Code, as added by this section is due not later than August 25, 2007.

SECTION __.35. Section 171.109(g), Tax Code, as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, is reenacted and amended to read as follows:

(g) All oil and gas exploration and production activities by a corporation which is required to or elects to use generally accepted accounting principles to compute surplus must be reported

according to the successful efforts or the full cost method of accounting. Notwithstanding the method of accounting, the corporation may elect to depreciate the corporation's oil and gas properties using any alternative method of depreciation recognized under generally accepted accounting principles. The useful lives of intangible assets shall be similar to the useful lives of tangible assets.

SECTION __.36. Section 171.110, Tax Code, is amended by adding Subsection (m) to read as follows:

(m) Except as otherwise provided by this section, in computing taxable earned surplus, a corporation is considered to have made an election to use the same methods used in filing its federal income tax return.

SECTION __.37. Section 171.1121(b), Tax Code, is amended to read as follows:

(b) Except as otherwise provided by this section, a corporation shall use the same accounting methods to apportion taxable earned surplus as the corporation used to compute taxable earned surplus [~~in computing reportable federal taxable income~~].

SECTION __.38. Section 171.801(2), Tax Code, is amended to read as follows:

(2) "Qualified capital investment" means tangible personal property, as defined by 26 C.F.R. Section 1.1245-3(b)(1), that is first placed in service in a strategic investment area, or first placed in service in a county with a population of less than 50,000 by a corporation primarily engaged in agricultural processing, and that is described as Section 1245 property by [~~in~~] Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include land [~~real property~~] or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." Property expensed under Section 179, Internal Revenue Code, is not

considered a "qualified capital investment."

SECTION __.39. Section 182.082, Tax Code, is amended to read as follows:

Sec. 182.082. TAX PAYMENTS: DUE DATE. Except as provided in Section 182.083 [~~of this code~~], the taxes imposed by this chapter, after any prepayment of taxes under Section 182.0825, are due and payable to the comptroller on the last day of January, April, July, and October of each year.

SECTION __.40. (a) Subchapter E, Chapter 182, Tax Code, is amended by adding Section 182.0825 to read as follows:

Sec. 182.0825. QUARTERLY PREPAYMENTS. (a) A person required to pay taxes under this chapter shall make quarterly prepayments of those taxes based on a reasonable estimate of tax liability. The person shall make the prepayment not later than the last day of the first month of the quarterly period for which the prepayment is made.

(b) A prepayment made under this section is not considered to be based on a reasonable estimate of tax liability if the payment is less than:

(1) 90 percent of the tax ultimately due for the quarterly period for which the prepayment is made; or

(2) the amount of tax paid for the same quarterly period of the previous year, if the person paid taxes for that quarterly period.

(c) A person who is required to prepay taxes under this section must file a report for that quarterly period when due as provided by Section 182.081. The amount of a prepayment shall be credited against the amount of the taxpayer's actual tax liability under Section 182.082 as shown on the report.

(d) If there is tax liability owed by the person in excess of the prepayment credit, the person shall send to the comptroller the remaining tax liability as provided by Section 182.082.

(e) If the amount prepaid under this section exceeds the amount of the person's actual tax liability, the excess of the prepayment shall be credited against future tax liability or refunded to the person as provided by Subchapter C, Chapter 111.

(b) This section applies only to taxes imposed on or after

July 1, 2007. Taxes imposed before that date are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose. The first prepayment required by Section 182.0825, Tax Code, as added by this section is due not later than July 31, 2007.

SECTION __.41. Section 183.023, Tax Code, is amended to read as follows:

Sec. 183.023. PAYMENT. The tax due for the preceding month, after any prepayment of taxes under Section 183.0235, shall accompany the return and shall be payable to the state. The comptroller shall deposit the revenue in the general revenue fund.

SECTION __.42. (a) Subchapter B, Chapter 183, Tax Code, is amended by adding Section 183.0235 to read as follows:

Sec. 183.0235. MONTHLY PREPAYMENTS. (a) A permittee shall make monthly prepayments of the taxes under this chapter based on a reasonable estimate of tax liability. The permittee shall make the prepayment not later than the 20th day of the month for which the prepayment is made.

(b) A prepayment made under this section is not considered to be based on a reasonable estimate of tax liability if the payment is less than:

(1) 90 percent of the tax ultimately due for the month in which the prepayment is made; or

(2) the amount of tax paid in the same month of the previous year, if the permittee paid taxes for that month.

(c) A permittee must file a return when due as provided by Section 183.022. The amount of a prepayment shall be credited against the amount of the permittee's actual tax liability as shown on the return.

(d) If there is tax liability owed by the permittee in excess of the prepayment credit, the permittee shall send to the comptroller the remaining tax liability as provided by Section 183.022.

(e) If the amount prepaid under this section exceeds the amount of the permittee's actual tax liability, the excess of the prepayment shall be credited against future tax liability or refunded to the permittee as provided by Subchapter C, Chapter 111.

(b) This section applies only to taxes imposed on or after August 1, 2007. Taxes imposed before that date are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose. The first prepayment required by Section 183.0235, Tax Code, as added by this section is due not later than August 20, 2007.

SECTION __.43. Section 183.053(b), Tax Code, is amended to read as follows:

(b) The total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this chapter shall be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state. The comptroller may not set the amount of security at less than \$1,000 or more than the greater of \$100,000 or four times the amount of the permittee's average monthly tax liability [~~\$50,000~~].

SECTION __.44. Section 201.058(b), Tax Code, is amended to read as follows:

(b) Operators increasing production by marketing gas from a well [~~an oil well or lease~~] that has been released into the air for six [~~12~~] months or more pursuant to the rules of the Railroad Commission of Texas [~~commission~~] shall be entitled to an exemption from the tax imposed by this chapter on the production resulting from the marketing of such gas for the life of the well [~~or lease~~].

SECTION __.45. Section 201.102, Tax Code, is amended to read as follows:

Sec. 201.102. CASH SALES. If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts [~~unless the reimbursement amount for taxes due under this chapter is separately stated in the sales contract~~].

SECTION __.46. Section 201.201, Tax Code, is amended to read as follows:

Sec. 201.201. TAX DUE. The tax imposed by this chapter for gas produced and saved is due at the office of the comptroller in

Austin on the 20th day of the [~~second~~] month following the month of production.

SECTION __.47. Subchapter B, Chapter 202, Tax Code, is amended by adding Section 202.060 to read as follows:

Sec. 202.060. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT.

(a) In this section, "enhanced efficiency equipment" means equipment used in the production of oil that reduces the energy used to produce a barrel of fluid by 10 percent or more when compared to commonly available alternative equipment. The term does not include a motor or downhole pump. Equipment does not qualify as enhanced efficiency equipment unless an institution of higher education approved by the comptroller that is located in this state and that has an accredited petroleum engineering program evaluated the equipment and determined that the equipment does produce the required energy reduction.

(b) The taxpayer responsible for the payment of severance taxes on the production from a well in this state on which enhanced efficiency equipment is installed and used is entitled to a credit in an amount equal to 20 percent of the cost of the equipment, provided that:

(1) the cumulative total of all severance tax credits authorized by this section may not exceed \$2,000 for any well;

(2) the enhanced efficiency equipment installed in a qualifying well must have been purchased and installed not earlier than September 1, 2005, or later than September 1, 2009;

(3) the taxpayer must file an application with the comptroller for the credit and must demonstrate to the comptroller that the enhanced efficiency equipment has been purchased and installed in the well within the period prescribed by Subdivision (2);

(4) the number of applications the comptroller may approve each state fiscal year may not exceed a number equal to two percent of the producing wells in this state on September 1 of that state fiscal year, as determined by the comptroller; and

(5) the manufacturer of the enhanced efficiency equipment must obtain an evaluation of the product under Subsection (a).

(c) The taxpayer may carry any unused credit forward until the credit is used.

SECTION __.48. Section 202.151, Tax Code, is amended to read as follows:

Sec. 202.151. TAX DUE. The tax imposed by this chapter, after any prepayment of taxes under Section 202.1515, is due at the office of the comptroller on the 25th day of each calendar month for oil produced during the preceding calendar month.

SECTION __.49. (a) Subchapter D, Chapter 202, Tax Code, is amended by adding Section 202.1515 to read as follows:

Sec. 202.1515. MONTHLY PREPAYMENTS. (a) A person required to pay the tax under this chapter shall make monthly prepayments of the taxes under this chapter based on a reasonable estimate of tax liability. The person shall make the prepayment not later than the 25th day of the month for which the prepayment is made.

(b) A prepayment made under this section is not considered to be based on a reasonable estimate of tax liability if the payment is less than:

(1) 90 percent of the tax ultimately due for the month in which the prepayment is made; or

(2) the amount of tax paid in the same month of the previous year, if the person paid taxes for that month.

(c) A person required to pay the tax under this chapter must file a report when due as provided by Subchapter E. The amount of a prepayment shall be credited against the amount of the person's actual tax liability as shown on the report.

(d) If there is tax liability owed by the person in excess of the prepayment credit, the permittee shall send to the comptroller the remaining tax liability as provided by Section 202.151.

(e) If the amount prepaid under this section exceeds the amount of the person's actual tax liability, the excess of the prepayment shall be credited against future tax liability or refunded to the person as provided by Subchapter C, Chapter 111.

(b) This section applies only to taxes imposed on or after August 1, 2007. Taxes imposed before that date are governed by the law in effect on the date the taxes were imposed, and that law is continued in effect for that purpose. The first prepayment

required by Section 202.1515, Tax Code, as added by this section is due not later than August 25, 2007.

SECTION __.50. Sections 313.021(1) and (2), Tax Code, are amended to read as follows:

(1) "Qualified investment" means:

(A) tangible personal property, as defined by 26 C.F.R. Section 1.1245-3(b)(1), that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, and is described as Section 1245 property by Section 1245(a), Internal Revenue Code of 1986;

(B) tangible personal property that is first placed in service in this state during the applicable qualifying time period that begins on or after January 1, 2002, without regard to whether the property is affixed to or incorporated into real property, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually located in the cleanroom environment, including:

(i) integrated systems, fixtures, and piping;

(ii) all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances; and

(iii) production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting; or

(C) a building or a permanent, nonremovable component of a building that is built or constructed during the applicable qualifying time period that begins on or after January 1, 2002, and that houses tangible personal property described by Paragraph (A) or (B).

(2) "Qualified property" means:

(A) land:

(i) that is located in an area designated as a reinvestment zone under Chapter 311 or 312 or as an enterprise zone under Chapter 2303, Government Code;

(ii) on which a person proposes to

construct a new building or erect or affix a new improvement that does not exist before the date the owner applies for a limitation on appraised value under this subchapter;

(iii) that is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(iv) on which, in connection with the new building or new improvement described by Subparagraph (ii), the owner of the land, or the owner of a leasehold interest in the land, proposes to:

(a) make a qualified investment in an amount equal to at least the minimum amount required by Section 313.023; and

(b) create at least 25 new jobs;

(B) the new building or other new improvement described by Paragraph (A)(ii); and

(C) tangible personal property that:

(i) is not subject to a tax abatement agreement entered into by a school district under Chapter 312; and

(ii) except for new equipment described in Section 151.318(q) or (q-1), is first placed in service in the new building or in or on the new improvement described by Paragraph (A)(ii), or on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business conducted in that new building or in or on that new improvement.

SECTION __.51. Section 321.203, Tax Code, is amended by amending Subsections (b)-(e) and adding Subsection (n) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items [~~tangible personal property~~] are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of a taxable item [~~tangible personal property~~] by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item [~~property~~], if the retailer ships or delivers the item [~~property~~] to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item [~~property~~], if the purchaser or lessee takes possession of and removes the item [~~property~~] from a place of business of the retailer.

(d) If neither the possession of a taxable item [~~tangible personal property~~] is taken at nor shipment or delivery of the item [~~property~~] is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

(e) A sale of a taxable item [~~tangible personal property~~] is consummated at the location in this state to which the item [~~property~~] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item [~~property~~] occurs at, or shipment or delivery of the item [~~property~~] originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item [~~property~~] is shipped or delivered directly to the purchaser by the supplier.

(n) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. However, if the job site includes areas in multiple municipalities, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's

agent who took the order operates.

SECTION __.52. Section 321.302, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) For purposes of Subsection (c)(3), "full amount of the tax due" means the amount of municipal tax to be allocated that can be determined without a comptroller's audit of the person's records.

SECTION __.53. Section 321.503, Tax Code, is amended to read as follows:

Sec. 321.503. STATE'S SHARE. Before sending any money to a municipality under this subchapter the comptroller shall deduct two percent of the amount of the taxes collected within the municipality during the period for which a distribution is made as the state's charge for its services under this chapter and shall~~[~~~~subject to premiums payments under Section 321.501(c),~~~~]~~ credit the money deducted to the general revenue fund.

SECTION __.54. Section 323.102(c), Tax Code, is amended to read as follows:

(c) A tax imposed under Section 323.105 of this code or Chapter 326 or 383, Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b).

SECTION __.55. Section 323.203, Tax Code, is amended by amending Subsections (b)-(e) and adding Subsection (m) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items ~~[tangible personal property]~~ are consummated at that place of business except as provided by Subsection (e).

(c) If a retailer has more than one place of business in this state, a sale of a taxable item ~~[tangible personal property]~~ by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item ~~[property]~~, if the retailer ships or delivers the item ~~[property]~~ to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item [~~property~~], if the purchaser or lessee takes possession of and removes the item [~~property~~] from a place of business of the retailer.

(d) If neither the possession of a taxable item [~~tangible personal property~~] is taken at nor shipment or delivery of the item [~~property~~] is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's salesman who took the order operates.

(e) A sale of a taxable item [~~tangible personal property~~] is consummated at the location in this state to which the item [~~property~~] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item [~~property~~] occurs at, or shipment or delivery of the item [~~property~~] originates from, a location in this state other than a place of business of the retailer and if:

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item [~~property~~] is shipped or delivered directly to the purchaser by the supplier.

(m) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. However, if the job site includes areas in multiple municipalities, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's

agent who took the order operates.

SECTION __.56. Section 323.503, Tax Code, is amended to read as follows:

Sec. 323.503. STATE'S SHARE. Before sending any money to a county under this subchapter the comptroller shall deduct two percent of the amount of the taxes collected within the county during the period for which a distribution is made as the state's charge for its services under this chapter and shall~~[, subject to premiums payments under Section 323.501(c),]~~ credit the money deducted to the general revenue fund.

SECTION __.57. Section 502.1025(b), Transportation Code, is amended to read as follows:

(b) A county tax assessor-collector shall retain under Section 502.102(b) fees based on the following percentage of the amounts calculated under Subsection ~~[subsection]~~ (a) during each of the following fiscal years:

- (1) in fiscal year 2006, 100 ~~[90]~~ percent;
- (2) in fiscal year 2007, 100 ~~[80]~~ percent;
- (3) in fiscal year 2008, 70 percent;
- (4) in fiscal year 2009, 60 percent;
- (5) in fiscal year 2010, 50 percent;
- (6) in fiscal year 2011, 40 percent;
- (7) in fiscal year 2012, 30 percent;
- (8) in fiscal year 2013, 20 percent;
- (9) in fiscal year 2014, 10 percent; and
- (10) in fiscal year 2015 and succeeding years, 0 percent.

SECTION __.58. The heading to Subchapter A, Chapter 16, Utilities Code, is amended to read as follows:

SUBCHAPTER A. ASSESSMENT ON UTILITY GROSS RECEIPTS ~~[PUBLIC UTILITIES]~~

SECTION __.59. The heading to Section 16.001, Utilities Code, is amended to read as follows:

Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS ~~[PUBLIC UTILITIES]~~.

SECTION __.60. Sections 16.001(a) and (b), Utilities Code, are amended to read as follows:

(a) To defray the expenses incurred in the administration of this title, an assessment is imposed on each telecommunications utility, electric [public] utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier.

(b) An assessment under this section is equal to one-sixth of one percent of the telecommunications utility's, electric [public] utility's, retail electric provider's, or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.

SECTION __.61. Section 16.002(b), Utilities Code, is amended to read as follows:

(b) A telecommunications utility, electric [public] utility, retail electric provider, or electric cooperative may instead make quarterly payments due August 15, November 15, February 15, and May 15.

SECTION __.62. The following sections of the Tax Code are repealed:

- (1) Section 151.103(d);
- (2) Section 151.202(c);
- (3) Section 151.423;
- (4) Section 321.203(1), Tax Code, as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003; and
- (5) Section 323.203(1).

SECTION __.63. The changes in law made by this article to Section 201.102, Tax Code, apply to a refund claim or determination under Chapter 111, Tax Code, made in relation to a tax that is due on or after the effective date of this article. A refund claim or determination that is made in relation to a tax that is due before the effective date of this article is governed by the law in effect on the date the tax is due, and that law is continued in effect for that purpose.

SECTION __.64. The changes in law made by this article to Section 111.009, Tax Code, apply only to a petition for redetermination filed on or after the effective date of this article.

SECTION __.65. The changes in law made by this article to Section 151.006, Tax Code, do not affect any matter that is the subject of litigation pending on the effective date of this article.

SECTION __.66. The change in law made to Section 171.109(g), Tax Code, by this article is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this article.

SECTION __.67. If a change in law made to Section 16.001 or 16.002, Utilities Code, by this article conflicts with another bill enacted by the 79th Legislature, Regular Session, 2005, that amends Section 16.001 or 16.002, including **HB 1779**, that other bill controls.

SECTION __.68. This article takes effect October 1, 2005.

ARTICLE __. SALE OF CIGARETTES AND TOBACCO PRODUCTS

SECTION __.01. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.0821 to read as follows:

Sec. 161.0821. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) A person who is younger than 18 years of age commits an offense if the person purchases or attempts to purchase cigarettes or tobacco products.

(b) For purposes of this section, a person attempts to purchase cigarettes or tobacco products if the person commits an act amounting to more than mere preparation that tends, but fails, to effect the purchase.

(c) An offense under this section is a Class C misdemeanor.

SECTION __.02. (a) Chapter 161, Health and Safety Code, is amended by adding Subchapter U to read as follows:

SUBCHAPTER U. INTERNET OR MAIL-ORDER SALES OF CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.551. DEFINITIONS. (a) In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(b) In this subchapter, "common carrier," "consumer," "distributor," "importer," "manufacturer," "permit holder,"

"retailer," and "wholesaler" have the meanings assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Sec. 161.552. APPLICABILITY OF SUBCHAPTER TO INDIAN TRIBES.
This subchapter does not apply to cigarette or tobacco product sales by an Indian tribe, as defined by 25 U.S.C. Section 450b(e), or by members of the Indian tribe, to a consumer in this state if the consumer is a verified adult member of that Indian tribe and the buyer and seller are each located on land over which the tribe exercises governmental power and that is owned or occupied by that tribe.

Sec. 161.553. CERTAIN DELIVERIES OF CIGARETTES AND TOBACCO PRODUCTS PROHIBITED. (a) A distributor, importer, manufacturer, retailer, wholesaler, or other person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products, including selling cigarettes or tobacco products over the Internet or through mail-order sales, may not sell, offer for sale, deliver, or cause to be delivered any cigarettes or tobacco products to a person in this state except in a face-to-face transaction at the time of purchase unless the cigarettes or tobacco products are in a container or wrapping plainly and visibly marked on the exterior with the words "cigarettes" or "tobacco products" and the sale or delivery is made to one of the following persons for purposes other than personal consumption by the recipient:

- (1) a permit holder;
- (2) a manufacturer or importer of tobacco products or an export warehouse proprietor with a federal permit under 26 U.S.C. Section 5712 or an operator of a federally designated customs bonded warehouse under 19 U.S.C. Section 1311 or 1555; or
- (3) a person who is an officer, employee, or agent of the United States government, this state, or a department, agency, instrumentality, or political subdivision of the United States or this state acting within the scope of the person's official duties.

(b) A person within the jurisdiction of this state's laws, including a common carrier or commercial delivery service, may not knowingly transport cigarettes or tobacco products on behalf of another person for commercial or business purposes for delivery to

a person in this state other than a person described by Subsection (a)(1), (2), or (3).

(c) Except as specifically provided by Subsection (b), this section does not apply to a common carrier or other delivery service operating within the scope of its business as a common carrier or delivery service.

Sec. 161.554. PERMIT HOLDER LIST. The comptroller shall compile and make available on the comptroller's Internet website and by other means a list of all persons who hold a permit under Subchapter C, Chapter 154, or Subchapter C, Chapter 155, Tax Code. The comptroller shall periodically update the list of persons holding a permit under those subchapters.

Sec. 161.555. VIOLATOR'S LIST. (a) The department shall maintain a list of persons the department determines have violated Section 161.553(a) or are violating or offering to violate that subsection.

(b) The department shall provide to the United States postal service, each common carrier and commercial delivery service operating in this state, and any other person who delivers cigarettes or tobacco products into or within this state a copy of this subchapter and the list maintained under Subsection (a). The department shall provide updated copies of the list as the department determines is appropriate.

(c) Before adding a person to the list maintained under Subsection (a), the department shall provide 10 days written notice and an opportunity to be heard to that person. The notice must include the text of this subchapter. The notice may be made by an electronic communication.

(d) The list maintained under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code. The department and each person who receives a copy of the list from the department under this section must maintain the list as confidential and may use the list only to comply with this subchapter.

Sec. 161.556. CARRIER AND DELIVERY SERVICE RESPONSIBILITIES. (a) A person who is a common carrier or commercial delivery service within the jurisdiction of this state's

laws who receives a copy of a list maintained under Section 161.555 may not make any deliveries in this state on behalf of a person identified in the list unless:

(1) the person making the delivery knows or affirmatively believes in good faith that the package does not contain cigarettes or tobacco products; or

(2) the delivery is made to a person described by Section 161.553(a)(1), (2), or (3).

(b) A person who delivers cigarettes or tobacco products and receives a copy of a list maintained under Section 161.155:

(1) is not required to:

(A) inspect a package being delivered to determine whether the package contains cigarettes or tobacco products;

(B) determine whether the list is complete, accurate, and up-to-date; or

(C) determine whether any person ordering or requesting a delivery is in compliance with this subchapter;

(2) is not subject to any penalty for:

(A) failing to make a specific delivery on behalf of a person on the list; or

(B) establishing and following a policy of not making deliveries:

(i) in this state on behalf of a person on the list;

(ii) of cigarettes or tobacco products in this state; or

(iii) of cigarettes or tobacco products in this state for any person that is not a distributor, manufacturer, retailer, or wholesaler;

(3) is not subject to criminal penalties for a violation of this subchapter unless the person knowingly violates this subchapter for the specific purpose of:

(A) assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products to violate this subchapter; or

(B) profiting from the violation of this

subchapter by another person; and

(4) may collect an additional fee from the person's customers who order deliveries of cigarettes or tobacco products to recover any costs incurred by the person related to complying with this subchapter.

(c) An employee of a common carrier or commercial delivery service or of any other person making deliveries for a carrier or delivery service is not subject to criminal or civil penalties for violating this subchapter unless the employee knowingly violates this subchapter for the specific purpose of assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products in violation of this subchapter.

Sec. 161.557. CIVIL PENALTIES. (a) Except as provided in Section 161.556(c), a person who violates this subchapter is subject to a civil penalty for each violation in an amount:

(1) of at least \$500 and not more than the greater of \$5,000 or five times the value of the cigarettes or tobacco products at issue; and

(2) equal to any profits, gain, gross receipts, or other benefits received from the violation.

(b) A person who violates Section 161.553(a) must reimburse this state and the applicable political subdivisions of this state for all unpaid taxes that would otherwise have been imposed by this state and those political subdivisions on the cigarettes and tobacco products in question, plus interest, and for any other damages incurred by the state or the political subdivision as a result of the violation.

Sec. 161.558. CRIMINAL PENALTIES. Except as provided by Section 161.556(b)(3) and (c), a person who knowingly violates Section 161.553 or 161.556(a) commits an offense. An offense under this subsection is a Class A misdemeanor, except that if it is shown on the trial of the offense that the person has a previous conviction under this subsection, the offense is a state jail felony.

Sec. 161.559. COSTS. (a) The comptroller shall deposit an amount equal to 50 percent of the civil penalties recovered by this state under this subchapter to be appropriated only to the

comptroller, department, attorney general, and other state agencies to enforce this subchapter or make related investigations or to enforce other state laws relating to contraband cigarettes and tobacco products, the collection of taxes on cigarettes and tobacco products, and the prohibition of cigarette and tobacco product sales to minors.

(b) In a civil action brought to enforce this subchapter, the state is entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees, plus interest.

Sec. 161.560. ENFORCEMENT. (a) The attorney general may bring an action in the appropriate court in this state to enforce this subchapter, seek civil penalties and related damages, and equitable relief, or to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(b) On providing at least 15 days notice to the attorney general, enforcement officials of a political subdivision of this state may bring an action in the appropriate court in this state, or join an action being brought by the attorney general, to seek damages and equitable relief or to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(c) On providing at least 15 days notice to the attorney general, a person who holds a valid permit under 26 U.S.C. Section 5712 may bring an action in the appropriate court in this state, or join an action being brought by the attorney general, to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(d) On receiving notice from another person of the person's intent to bring an action under this subchapter in the appropriate court in this state, the attorney general may choose to join in the other person's action or bring an action by this state in its stead and shall inform the person providing notice of how the attorney general will proceed not later than the 15th day after receiving the notice.

(e) The attorney general shall make public, by posting on

the Internet and other means, a list of all actions taken to enforce this subchapter and a list of all persons found to have violated this subchapter, including the persons' names, addresses, and any other information the attorney general believes may be useful to other jurisdictions enforcing laws prohibiting or restricting cigarette or tobacco product sales for personal consumption in which the seller and buyer do not initiate and complete the entire transaction in each other's physical presence.

(b) Effective September 1, 2006, Subchapter R, Chapter 161, Health and Safety Code, as added by Chapter 730, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

(c) Not later than January 1, 2006, the comptroller of public accounts shall post the list of persons who hold permits under Subchapter C, Chapter 154, Tax Code, or Subchapter C, Chapter 155, Tax Code, as required by Section 161.554, Health and Safety Code, as added by this section.

(d) Not later than June 1, 2006, the Department of State Health Services shall create and distribute the list as required by Section 161.555, Health and Safety Code, as added by this section.

(e) Notwithstanding Subchapter U, Chapter 161, Health and Safety Code, as added by this section, a person is not subject to a penalty for a violation of that subchapter before September 1, 2006.

(f) The change in law made by this section applies only to an offense committed on or after September 1, 2006. An offense committed before September 1, 2006, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2006, if any element of the offense was committed before that date.

(g) This section takes effect September 1, 2005, except that Sections 161.557-161.560, Health and Safety Code, as added by this section, take effect September 1, 2006.

SECTION __.03. (a) Article 59.01(2), Code of Criminal Procedure, as amended by Section 2.141, Chapter 198, Section 17, Chapter 257, and Section 3, Chapter 649, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to

read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code; ~~or~~

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code;

(viii) a Class A misdemeanor or state jail felony under Subchapter U, Chapter 161, Health and Safety Code; or

(ix) [~~(vii)~~] a Class B misdemeanor under Section 35.60 [~~35.58~~], Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(ix) [~~(B)(vii)~~] of this subdivision, or a crime of violence; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(ix) [~~(B)(vii)~~] of this subdivision, or a crime of violence.

(b) The change in law made by this section applies only to an offense committed on or after September 1, 2006. An offense committed before September 1, 2006, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2006, if any element of the offense was committed before that date.

(c) This section takes effect September 1, 2006.