

## BILL ANALYSIS

Senate Research Center

C.S.S.B. 1325  
By: Armbrister  
Finance  
5/14/2005  
Committee Report (Substituted)

### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

As the principal administrator of tax collection and revenue management, the Office of the Comptroller of Public Accounts relies on its rulemaking authority to facilitate the performance of its duties.

C.S.S.B. 1325 codifies policies, facilitates enforcement, and makes technical corrections to state law.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 15 (Section 111.009, Tax Code) and SECTION 19 (Section 111.0625, Tax Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.081, Health and Safety Code, to define "attempt."

SECTION 2. Amends Subchapter H, Chapter 161, Health and Safety Code, by adding Section 161.0821, as follows:

Sec. 161.0821. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) Provides that 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) Provides that an offense under this section is a Class C misdemeanor.

SECTION 3. Amends Section 285.063(a), Health and Safety Code, as follows:

(a) Requires the hospital district, following an election to adopt a tax under this subchapter, to submit to the comptroller of public accounts (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 it submits the results of the election held as provided by this subchapter.

SECTION 4. Amends Section 775.0753, Health and Safety Code, by adding Subsection (d), as follows:

(d) Requires the emergency services district to 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 it submits the results of the election held as provided by this chapter.

SECTION 5. Amends Section 776.0753, Health and Safety Code, by adding Subsection (d), as follows:

(d) Requires the emergency services district in counties of 125,000 or less to 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 it submits the results of the election held as provided by this chapter.

SECTION 6. Amends Article 1.16(b), Insurance Code, to make a nonsubstantive change.

SECTION 7. Amends Sections 221.002(b) and (c), Insurance Code, as follows:

(b) Requires the insurer, except as provided by Subsection (c), in determining an insurer's taxable premiums, rather than premium receipts, to include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and any other considerations on insurance written on each and every kind of property or risks located in this state, including home warranty insurance.

(c) Provides that premium finance charges clearly identified in a premium note or other evidence of premiums payable that are separately stated to the policyholder in an invoice, billing or contract are not included in determining an insurer's taxable premium receipts.

SECTION 8. Amends Section 222.002(b), Insurance Code, to require the insurer or health maintenance organization (HMO), except as otherwise provided by this section, in determining an insurer's taxable gross premiums or an HMO's taxable gross revenues to include the total gross amounts of certain fees received by the insurer or the HMO in a calendar year from any kind of contract covering risks on individuals or groups, rather than a person, located in this state and arising from the business of an HMO or the business of certain types of insurance for profit or otherwise or for mutual benefit or protection.

SECTION 9. Amends Section 223.003(a), Insurance Code, as follows:

(a) Provides that an annual tax is imposed on all premiums, rather than each title insurance company that receives premiums, from the business of title insurance. Provides that the rate of the tax is 1.35 percent of title insurance taxable premiums for a calendar year, including certain premiums. Makes conforming changes.

SECTION 10. Amends Section 252.003, Insurance Code, to require an insurer to pay maintenance taxes under this chapter on the correctly reported gross premiums from writing insurance in this state against loss or damage by an event covered under a home warranty insurance policy or an inland marine insurance policy.

SECTION 11. Amends Section 271.002(a), Insurance Code, to make a conforming change.

SECTION 12. Amends Section 1502.053, Insurance Code, as follows:

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) Creates this subsection from existing text. Provides that the issuer of a children's health benefit plan approved under Section 1502.051 is not subject to the premium tax or the tax revenues imposed under Chapter 222 (Life, Health, and Accident Premium Tax) with respect to money received for coverage provided under that plan.

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

SECTION 13. Amends Section 383.101, Local Government Code, by adding Subsection (d), to require the district to 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 it submits the results of the election held as provided by this chapter.

SECTION 14. Amends Section 387.012, Local Government Code, to require a county assistance district to 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 it submits the results of the election held as provided by this chapter.

SECTION 15. Amends Section 111.009, Tax Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Authorizes a person having direct interest in a determination to assert legal and factual grounds to challenge the assessment.

(e) Authorizes the person filing the petition [for redetermination] to assert credits or claim a refund for the same tax type and same period to offset the assessment. Requires any credits asserted or refund claimed to be included in the petition or to be filed within the applicable limitations period, except as otherwise provided by this section. Requires the comptroller to promulgate 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 prior to the hearing.

(f) Authorizes a credit or refund for the same tax type and same period to be filed in the redetermination proceeding for all issues if the credit is asserted or the refund is claimed within one year from the date of filing of the petition for redetermination. Provides that this provision does not authorize the filing of a separate refund or credit that is not authorized by Section 111.107(b) (When Refund or Credit is Permitted).

SECTION 16. Amends Section 111.010, Tax Code, by adding Subsection (e), to provide that a judgment in a suit arising under this section remains valid and enforceable until satisfied and does not require periodic renewal. Prohibits the provisions of Section 34.001 (No Execution on Dormant Judgment), Civil Practice and Remedies Code, from applying to a judgment in a suit arising under this section.

SECTION 17. Amends Section 111.016, Tax Code, by adding Subsection (e), to authorize the comptroller to assess the responsible individual liable [for payment to the state of tax collections] under Subsection (b) at any time before the expiration of one year after the later of the date the tax liability of the corporation, association, limited liability company, limited partnership, or other legal entity becomes final or the date the bankruptcy proceeding is closed or dismissed.

SECTION 18. Amends Subchapter B, Chapter 111, Tax Code, by adding Section 111.0511, as follows:

Sec. 111.0511. RESTRICTED OR CONDITIONAL PAYMENTS OF TAXES, PENALTIES, AND INTEREST PROHIBITED. Sets forth that 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 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 penalties and interest to an amount less than the amount of penalties and interest accrued on the delinquent taxes is void.

SECTION 19. Amends Section 111.0625, Tax Code, as follows:

Sec. 111.0625. ELECTRONIC TRANSFER OF CERTAIN PAYMENTS. (a) Creates this subsection from existing text.

(b) Authorizes the comptroller by rule to reduce the amount provided in Subsection (a) to \$50,000 or more.

SECTION 20. Amends Section 111.107(a), Tax Code, as follows:

(a) Authorizes a person, except as otherwise expressly provided, to request a refund or a credit and authorizes the comptroller to 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 under Chapter 162 (Motor Fuel Taxes), rather than Chapter 153, except Section 162.126(f) (Refund for Bad Debit; Credit for Nonpayment), 162.128(f) (When Gasoline Tax Refund or Credit may be Filed), or 162.230(d), rather than Sections 153.1195(e), 153.121(d), 153.2225(e), or 153.224(d).

SECTION 21. Amends Section 151.006, Tax Code, to redefine "sale for resale."

SECTION 22. Amends Section 151.011(a), Tax Code, to redefine "use".

SECTION 23. Amends Section 151.3111(b), Tax Code, to provide that Subsection (a) does not apply to the performance of a service on tangible personal property that is exempted solely because of the application of Section 151.3162, through December 31, 2007.

SECTION 24. Amends Section 151.3162(d), Tax Code, to entitle a person, until January 1, 2008, to an exemption, rather than 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 for the taxes imposed by this chapter under Subsection (b).

SECTION 25. Amends Section 151.318(c), Tax Code, to add conveyor systems in certain intraplant transportation equipment to the list of specific equipment eligible for an exemption under this section.

SECTION 26. Amends Section 154.111(b), Tax Code, to require that an application for a permit required by this chapter be accompanied by a fee of \$300 for a manufacturer's permit.

SECTION 27. Amends Section 154.509, Tax Code, to provide that a person commits an offense if the person as a manufacturer, bonded agent, or importer, takes certain actions related to the sale of cigarettes.

SECTION 28. Amends Section 155.049(b), Tax Code, to require that an application for a permit required by this chapter be accompanied by a fee of \$300 for a manufacturer's permit.

SECTION 29. Amends Section 155.207, Tax Code, to provide that a person commits an offense if the person as a manufacturer, bonded agent, or importer, takes certain actions related to the sale of tobacco.

SECTION 30. Amends Section 156.051(b), Tax Code, as follows:

(b) Provides that the price of a room or space in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room or space for use or possession.

SECTION 31. Amends Section 156.052, Tax Code, to make a conforming change.

SECTION 32. Amends Section 156.053, Tax Code, to require a person owning, operating, managing, or controlling a hotel, or subletting a room or space in a hotel, to collect for the state the tax that is imposed by this chapter and that is calculated on the amount paid for the room or space in the hotel.

SECTION 33. Amends Section 162.001, Tax Code, by amending Subdivisions (20), (43), and (55) and adding Subdivision (63), to redefine "distributor," "motor fuel transporter," and "shipping document," and define "dyed diesel fuel retail dealer."

SECTION 34. Amends Section 162.004, Tax Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (h), as follows:

(a) Makes no change to existing text.

(a-1) Creates subsection from existing text of Subsection (a).

(b) Deletes existing text relating to the shipping document being issued by the terminal operator or operator of a bulk plant.

(h) Provides that this section does not apply to motor fuel that is delivered into the fuel supply tank of a motor vehicle.

SECTION 35. Amends Sections 162.016(a), (b), (d), and (e), Tax Code, as follows:

- (a) Deletes existing text relating to a shipping document for fuel created by the terminal or bulk plant at which the fuel was received.
- (b) Deletes existing text requiring the terminal or bulk plant to provide the shipping document.
- (d) Requires a seller, transporter, or receiver of motor fuel, rather than a terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that receives motor fuel, to take certain actions relating to the shipping document.
- (e) Makes a conforming change.

SECTION 36. Amends Sections 162.101(b) and (c), Tax Code, as follows:

- (b) Requires the supplier or permissive supplier to collect the tax imposed by this subchapter from the person who imports the gasoline into this state. Makes a conforming change.
- (c) Provides that a tax is imposed on the removal, rather than the sale or transfer of gasoline from the bulk transfer/terminal system in this state. Deletes existing text relating to a person who does not hold a supplier's license. Makes a conforming change.

SECTION 37. Amends Section 162.103(d), Tax Code, as follows:

- (d) Requires a person who sells gasoline in this state, other than by a bulk transfer, on which tax has not been paid for any purpose other than a purpose exempt under Section 162.104, to collect at the time of sale the tax from the purchaser or recipient of gasoline in addition to the selling price and provides that the person is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

SECTION 38. Amends Section 162.128(d), Tax Code, to authorize a supplier, permissive supplier, distributor, importer, exporter, or blender that determines taxes were erroneously reported and remitted or that paid more taxes than were due this state because of a mistake of fact or law to take credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller.

SECTION 39. Amends Sections 162.201(b), and (c) Tax Code, to make conforming changes.

SECTION 40. Amends Section 162.204(a), Tax Code, to provide that a tax imposed by this subchapter does not apply to dyed diesel fuel sold or delivered by a supplier or distributor into the bulk storage facility of a dyed diesel fuel retail dealer who provides a signed statement as provided by Section 162.206.

SECTION 41. Amends Section 162.205(a), Tax Code, to require a person to obtain the appropriate license issued by the comptroller before conducting the activities of a dyed diesel fuel retail dealer.

SECTION 42. Amends Section 162.206, Tax Code, by adding Subsection (k), as follows:

- (k) Provides that properly completed signed statements should be in the possession of the licensed supplier or distributor at the time the sale of dyed diesel fuel occurs. Requires exempt sales claimed by the licensed supplier or distributor that require delivery of signed statements, if the licensed supplier or distributor is not in possession of the signed statements within 60 days after the date written notice requiring possession of them is given to the licensed supplier or distributor by the comptroller, to be disallowed. Authorizes the comptroller, if the licensed supplier or distributor delivers the signed statements to the comptroller within the 60-day period, to verify the reason or basis for

the signed statements before allowing the exempt sales. Prohibits an exempt sale from being granted on the basis of signed statements delivered to the comptroller after the 60-day period.

SECTION 43. Amends Section 162.211(b), Tax Code, to make a conforming change.

SECTION 44. Amends Section 162.213, Tax Code, as follows:

(a) Makes a conforming change.

(b) Provides that a licensed supplier or permissive supplier who sells diesel fuel tax-free to an aviation fuel dealer whose license has been canceled or revoked under this chapter, or who sells dyed diesel fuel to a distributor or dyed diesel fuel retail dealer whose license has been canceled or revoked under this chapter, is liable for any tax on diesel fuel sold after receiving notice of the cancellation or revocation.

(c) Makes a conforming change.

SECTION 45. Amends Section 162.215(d), Tax Code, to make a conforming change.

SECTION 46. Amends Section 162.216, Tax Code, by adding Subsection (f-1), to require a dyed diesel fuel retail dealer to keep certain records and invoices relating to the inventory and sale of dyed and undyed diesel fuel.

SECTION 47. Amends Section 162.230(d), Tax Code, to make conforming changes.

SECTION 48. Amends Section 162.402(d) and (e), Tax Code, to make conforming changes.

SECTION 49. Amends the heading to Section 162.409, Tax Code, to read as follows:

Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED DISTRIBUTOR, LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

SECTION 50. Amends Sections 162.409(a) and (d), Tax Code, to add permissive suppliers to the list of entities to whom it is an offense to issue a bad check.

SECTION 51. Amends Section 171.052, Tax Code, as follows:

Sec. 171.052. CERTAIN CORPORATIONS. Provides that an insurance organization authorized to engage in insurance business in this state now required to pay an annual tax under Chapter 221, 222 (Property and Casualty Insurance Premium Tax), or 224 (Reciprocal and Interinsurance Exchange Premium Tax), rather than Chapter 4 or 9, Insurance Code, measured by its gross premium receipts is exempted from the franchise tax. Removes exemption for title insurance companies and title insurance agents. Deletes existing text exempting farm mutuals, local mutual aid associations, and burial associations from being subject to the franchise tax.

SECTION 52. Amends Section 171.109(h), Tax Code, as follows:

(h) Prohibit the cost, in calculating the historical cost of an investment in a subsidiary under the cost method of accounting, from being adjusted by the preacquisition retained earnings of the subsidiary corporation or other investee. Deletes existing text relating to a parent or investor corporation.

SECTION 53. Amends Section 171.110, Tax Code, by adding Subsection (m), as follows:

(m) Provides that a corporation, except as otherwise provided by this section, in computing taxable earned surplus, is considered to have made a election to use the same methods used in filing its federal income tax return. Requires the corporation to report based on its own financial condition. Prohibits consolidated reporting.

SECTION 54. Amends Section 171.1121(b), Tax Code, to require a corporation, except as otherwise provided by this section, to use the same accounting methods to apportion taxable earned surplus as it used to compute taxable earned surplus, rather than in computing reportable federal taxable income.

SECTION 55. Amends Section 183.053(b), Tax Code, to prohibit the comptroller from setting 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, rather than greater than \$50,000.

SECTION 56. Amends Section 201.102, Tax Code, to provide that 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. Deletes existing text relating to the reimbursement amount.

SECTION 57. Amends Section 201.352, Tax Code, as follows:

Sec. 201.352. New heading: UNLAWFUL PRODUCTION OR PURCHASE OF GAS. Prohibits any person, on notice from the comptroller, from producing or making payment for, rather than removing, natural or casinghead gas from a lease in this state if the owner or operator of the lease had failed to file a report or pay a tax as required by this chapter. Authorizes the comptroller to request the Railroad Commission of Texas (railroad commission) to place a seal on the well or otherwise disconnect the lease from any pipeline, metering or custody transfer facility after notice to the operator of the facility and prohibits the operator from reopening or otherwise reconnecting the facility until authorized to do so by the railroad commission.

SECTION 58. Amends Section 321.203, Tax Code, by amending Subsections (b)-(e) and adding Subsection (n), as follows:

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

(c)-(e) Makes conforming changes.

(n) Provides that a sale of a service described in Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. Provides that the sale, if the job site includes area in multiple municipalities, is consummated at certain locations.

SECTION 59. Amends Section 321.302(c), Tax Code, to make nonsubstantive and conforming changes and to define "full amount of the tax due."

SECTION 60. Amends Section 321.503, Tax Code, to delete existing text relating to premium payments under Section 321.501(c).

SECTION 61. Amends Section 323.102(c), Tax Code, to provide that a tax imposed under Chapter 383 (County Development Districts), 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 required by Section 323.405(b).

SECTION 62. Amends Section 323.203, Tax Code, by amending Subsections (b)-(e) and adding Subsection (m), to make conforming changes.

SECTION 63. Amends Section 323.503, Tax Code, to make conforming changes.

SECTION 64. Amends the heading to Section 16.001, Utilities Code, to read as follows:

Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS.

SECTION 65. Amends Sections 16.001(a) and (b), Utilities Code, as follows:

(a) Provides that an assessment is imposed on each telecommunications utility, electric utility, rather than public utility, retail electric provider, and electric cooperative within the jurisdiction of the Public Utility Commission that serves the ultimate consumer, including each interexchange telecommunications carrier, to defray the expenses incurred by the administration of this title.

(b) Makes a conforming change.

SECTION 66. Amends Section 16.002(b), Utilities Code, to make conforming changes.

SECTION 67. Repealer: Sections 151.103(d) (Telecommunications Services), 151.202(c) (Application for Permit), 162.016(c) (Importation and Exportation of Motor Fuel), 321.203(1) (Consummation of Sale), as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, and 323.203(1)(Consummation of Sale), Tax Code.

SECTION 68. Provides that the changes made by this Act to Section 201.102 (Cash Sales), Tax Code, apply to a refund claim or determination under Chapter 111 (Collection Procedures), Tax Code, without regard to whether the taxes that are the subject of the refund claim or determination were due before, on, or after the effective date of this Act.

SECTION 69. Makes application of Section 111.009, Tax Code, as amended by this Act, prospective.

SECTION 70. Effective date: October 1, 2005.