

1-1 By: Armbrister S.B. No. 1325  
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on Finance; May 16, 2005,  
1-4 reported adversely, with favorable Committee Substitute by the  
1-5 following vote: Yeas 13, Nays 0; May 16, 2005, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1325 By: Ogden

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to taxes, fees, and programs administered by the  
1-10 comptroller; providing a penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 161.081, Health and Safety Code, is  
1-13 amended by amending Subdivision (1) and adding Subdivision (1-a) to  
1-14 read as follows:

1-15 (1) "Attempt" means committing an act amounting to  
1-16 more than mere preparation that tends but fails to effect the  
1-17 commission of the offense intended.

1-18 (1-a) "Cigarette" has the meaning assigned by Section  
1-19 154.001, Tax Code.

1-20 SECTION 2. Subchapter H, Chapter 161, Health and Safety  
1-21 Code, is amended by adding Section 161.0821 to read as follows:

1-22 Sec. 161.0821. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS  
1-23 BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) A person  
1-24 who is younger than 18 years of age commits an offense if the person  
1-25 purchases or attempts to purchase cigarettes or tobacco products.

1-26 (b) An offense under this section is a Class C misdemeanor.

1-27 SECTION 3. Subsection (a), Section 285.063, Health and  
1-28 Safety Code, is amended to read as follows:

1-29 (a) The adoption or abolition of the tax or change in the tax  
1-30 rate takes effect on the first day of the first calendar quarter  
1-31 occurring after the expiration of the first complete calendar  
1-32 quarter occurring after the date on which the comptroller receives  
1-33 a notice of the results of the election. Following an election to  
1-34 adopt the tax under this subchapter, the district must submit to the  
1-35 comptroller a description of the boundaries of the district and a  
1-36 map of the district clearly showing the district's boundaries at  
1-37 the same time it submits the results of the election held as  
1-38 provided by this subchapter.

1-39 SECTION 4. Section 775.0753, Health and Safety Code, is  
1-40 amended by adding Subsection (d) to read as follows:

1-41 (d) The district must submit to the comptroller a  
1-42 description of the boundaries of the district and a map of the  
1-43 district clearly showing the district's boundaries at the same time  
1-44 it submits the results of the election held as provided by this  
1-45 chapter.

1-46 SECTION 5. Section 776.0753, Health and Safety Code, is  
1-47 amended by adding Subsection (d) to read as follows:

1-48 (d) The district must submit to the comptroller a  
1-49 description of the boundaries of the district and a map of the  
1-50 district clearly showing the district's boundaries at the same time  
1-51 it submits the results of the election held as provided by this  
1-52 chapter.

1-53 SECTION 6. Subsection (b), Article 1.16, Insurance Code, is  
1-54 amended to read as follows:

1-55 (b) Assessments for the expenses of such domestic  
1-56 examination which shall be sufficient to meet all the expenses and  
1-57 disbursements necessary to comply with the provisions of the laws  
1-58 of Texas relating to the examination of insurance companies and to  
1-59 comply with the provisions of this Article and Articles 1.17 and  
1-60 1.18 of this Code, shall be made by the State Board of Insurance  
1-61 upon the corporations or associations to be examined taking into  
1-62 consideration annual premium receipts, and/or admitted assets that  
1-63 are not attributable to 90 percent of pension plan contracts as

2-1 defined in Section 818(a) of the Internal Revenue Code of 1986 (26  
 2-2 U.S.C. Section 818(a)), and/or insurance in force; provided such  
 2-3 assessments shall be made and collected as follows: (1) expenses  
 2-4 attributable directly to a specific examination including  
 2-5 employees' salaries and expenses and expenses provided by Article  
 2-6 1.28 of this Code shall be collected at the time of examination;  
 2-7 (2) assessments calculated annually for each corporation or  
 2-8 association which take into consideration annual premium receipts,  
 2-9 and/or admitted assets that are not attributable to 90 percent of  
 2-10 pension plan contracts as defined in Section 818(a) of the Internal  
 2-11 Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance  
 2-12 in force shall be assessed annually for each such corporation or  
 2-13 association. In computing the assessments, the board may not  
 2-14 consider insurance premiums for insurance contracted for by a state  
 2-15 or federal governmental entity to provide welfare benefits to  
 2-16 designated welfare recipients or contracted for in accordance with  
 2-17 or in furtherance of Title 2, Human Resources Code, or the federal  
 2-18 Social Security Act (42 U.S.C. Section 301 et seq.). The amount of  
 2-19 all examination and evaluation fees paid in each taxable year to the  
 2-20 State of Texas by an insurance carrier shall be allowed as a credit  
 2-21 on the amount of premium taxes due [~~under this article~~]. The  
 2-22 limitations provided by Sections 803.007(1) and (2)(B) of this code  
 2-23 for domestic insurance companies apply to foreign insurance  
 2-24 companies.

2-25 SECTION 7. Subsections (b) and (c), Section 221.002,  
 2-26 Insurance Code, are amended to read as follows:

2-27 (b) Except as provided by Subsection (c), in determining an  
 2-28 insurer's taxable premiums [~~premium receipts~~], the insurer shall  
 2-29 include the total gross amounts of premiums, membership fees,  
 2-30 assessments, dues, revenues, and any other considerations on  
 2-31 insurance written by the insurer in a calendar year from any kind of  
 2-32 insurance written on each and every kind of property or risks  
 2-33 located in this state, including:

- 2-34 (1) fire insurance;
- 2-35 (2) ocean marine insurance;
- 2-36 (3) inland marine insurance;
- 2-37 (4) accident insurance;
- 2-38 (5) credit insurance;
- 2-39 (6) livestock insurance;
- 2-40 (7) fidelity insurance;
- 2-41 (8) guaranty insurance;
- 2-42 (9) surety insurance;
- 2-43 (10) casualty insurance;
- 2-44 (11) workers' compensation insurance;
- 2-45 (12) employers' liability insurance; [~~and~~]
- 2-46 (13) crop insurance written by a farm mutual insurance  
 2-47 company; and
- 2-48 (14) home warranty insurance.

2-49 (c) The following premium receipts are not included in  
 2-50 determining an insurer's taxable premium receipts:

- 2-51 (1) premium receipts received from the business of  
 2-52 title insurance;
- 2-53 (2) premium receipts received from the business of  
 2-54 life insurance, personal accident insurance, life and accident  
 2-55 insurance, or health and accident insurance for profit, written by  
 2-56 a life insurance company, life and accident insurance company,  
 2-57 health and accident insurance company, or for mutual benefit or  
 2-58 protection in this state;
- 2-59 (3) premium receipts received from another authorized  
 2-60 insurer for reinsurance;
- 2-61 (4) returned premiums and dividends paid to  
 2-62 policyholders; [~~and~~]
- 2-63 (5) premiums excluded by another law of this state;  
 2-64 and
- 2-65 (6) premium finance charges clearly identified in a  
 2-66 premium note or other evidence of premiums payable that are  
 2-67 separately stated to the policyholder in an invoice, billing, or  
 2-68 contract.

2-69 SECTION 8. Subsection (b), Section 222.002, Insurance Code,

3-1 is amended to read as follows:

3-2 (b) Except as otherwise provided by this section, in  
 3-3 determining an insurer's taxable gross premiums or a health  
 3-4 maintenance organization's taxable gross revenues, the insurer or  
 3-5 health maintenance organization shall include the total gross  
 3-6 amounts of premiums, membership fees, assessments, dues, revenues,  
 3-7 and other considerations received by the insurer or health  
 3-8 maintenance organization in a calendar year from any kind of health  
 3-9 maintenance organization certificate or contract or insurance  
 3-10 policy or contract covering risks on individuals or groups [~~a~~  
 3-11 ~~person~~] located in this state and arising from the business of a  
 3-12 health maintenance organization or the business of life insurance,  
 3-13 accident insurance, health insurance, life and accident insurance,  
 3-14 life and health insurance, health and accident insurance, life,  
 3-15 health, and accident insurance, including variable life insurance,  
 3-16 credit life insurance, and credit accident and health insurance for  
 3-17 profit or otherwise or for mutual benefit or protection.

3-18 SECTION 9. Subsection (a), Section 223.003, Insurance Code,  
 3-19 is amended to read as follows:

3-20 (a) An annual tax is imposed on all [~~each title insurance~~  
 3-21 ~~company that receives~~] premiums from the business of title  
 3-22 insurance. The rate of the tax is 1.35 percent of [~~the~~] title  
 3-23 insurance [~~company's~~] taxable premiums for a calendar year,  
 3-24 including any premiums retained by a title insurance agent as  
 3-25 provided by Section 223.005. For purposes of this chapter, a person  
 3-26 engages in the business of title insurance if the person engages in  
 3-27 an activity described by Section 2501.005.

3-28 SECTION 10. Section 252.003, Insurance Code, is amended to  
 3-29 read as follows:

3-30 Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer  
 3-31 shall pay maintenance taxes under this chapter on the correctly  
 3-32 reported gross premiums [~~collected~~] from writing insurance in this  
 3-33 state against loss or damage by:

- 3-34 (1) bombardment;
- 3-35 (2) civil war or commotion;
- 3-36 (3) cyclone;
- 3-37 (4) earthquake;
- 3-38 (5) excess or deficiency of moisture;
- 3-39 (6) explosion as defined by Article 5.52;
- 3-40 (7) fire;
- 3-41 (8) flood;
- 3-42 (9) frost and freeze;
- 3-43 (10) hail;
- 3-44 (11) insurrection;
- 3-45 (12) invasion;
- 3-46 (13) lightning;
- 3-47 (14) military or usurped power;
- 3-48 (15) an order of a civil authority made to prevent the  
 3-49 spread of a conflagration, epidemic, or catastrophe;
- 3-50 (16) rain;
- 3-51 (17) riot;
- 3-52 (18) the rising of the waters of the ocean or its  
 3-53 tributaries;
- 3-54 (19) smoke or smudge;
- 3-55 (20) strike or lockout;
- 3-56 (21) tornado;
- 3-57 (22) vandalism or malicious mischief;
- 3-58 (23) volcanic eruption;
- 3-59 (24) water or other fluid or substance resulting from  
 3-60 the breakage or leakage of sprinklers, pumps, or other apparatus  
 3-61 erected for extinguishing fires, water pipes, or other conduits or  
 3-62 containers;
- 3-63 (25) weather or climatic conditions; [~~or~~]
- 3-64 (26) windstorm;
- 3-65 (27) an event covered under a home warranty insurance  
 3-66 policy; or
- 3-67 (28) an event covered under an inland marine insurance  
 3-68 policy.

3-69 SECTION 11. Subsection (a), Section 271.002, Insurance

4-1 Code, is amended to read as follows:

4-2 (a) A maintenance fee is imposed on all ~~[each insurer with~~  
4-3 ~~gross]~~ premiums subject to assessment under Section 271.006.

4-4 SECTION 12. Section 1502.053, Insurance Code, is amended to  
4-5 read as follows:

4-6 Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The  
4-7 issuer of a [A] children's health benefit plan approved under  
4-8 Section 1502.051 [issuer] is not subject to the premium tax or the  
4-9 tax on revenues imposed under Chapter 222 with respect to money  
4-10 received for coverage provided under that plan.

4-11 (b) The issuer of a children's health benefit plan is not  
4-12 subject to the retaliatory tax imposed under Chapter 281 with  
4-13 respect to money received for coverage provided under that plan.

4-14 SECTION 13. Section 383.101, Local Government Code, is  
4-15 amended by adding Subsection (d) to read as follows:

4-16 (d) The district must submit to the comptroller a  
4-17 description of the boundaries of the district and a map of the  
4-18 district clearly showing the district's boundaries at the same time  
4-19 it submits the results of the election held as provided by this  
4-20 chapter.

4-21 SECTION 14. Section 387.012, Local Government Code, is  
4-22 amended to read as follows:

4-23 Sec. 387.012. EFFECTIVE DATE OF TAX. (a) The adoption of  
4-24 the tax, the change of the tax rate, or the repeal of the tax takes  
4-25 effect on the first day of the first calendar quarter occurring  
4-26 after the expiration of the first complete quarter occurring after  
4-27 the date the comptroller receives a notice of the results of the  
4-28 election adopting, changing, or repealing the tax.

4-29 (b) The district must submit to the comptroller a  
4-30 description of the boundaries of the district and a map of the  
4-31 district clearly showing the district's boundaries at the same time  
4-32 it submits the results of the election held as provided by this  
4-33 chapter.

4-34 SECTION 15. Section 111.009, Tax Code, is amended by  
4-35 amending Subsection (a) and adding Subsections (e) and (f) to read  
4-36 as follows:

4-37 (a) A person having a direct interest in a determination may  
4-38 petition the comptroller for a redetermination and may assert legal  
4-39 and factual grounds to challenge the assessment.

4-40 (e) The person filing the petition may assert credits or  
4-41 claim a refund for the same tax type and same period to offset the  
4-42 assessment. Any credits asserted or refund claimed must be  
4-43 included in the petition or must be filed within the applicable  
4-44 limitations period, except as otherwise provided by this section.  
4-45 The comptroller shall promulgate procedural rules that ensure that  
4-46 redetermination proceedings are expeditiously finalized and that  
4-47 provide that all parties receive equal time to prepare and submit  
4-48 their positions prior to the hearing.

4-49 (f) A credit or refund for the same tax type and same period  
4-50 may be filed in the redetermination proceeding for all issues if the  
4-51 credit is asserted or the refund is claimed within one year from the  
4-52 date of filing of the petition for redetermination. This provision  
4-53 does not authorize the filing of a separate refund or credit that is  
4-54 not authorized by Section 111.107(b).

4-55 SECTION 16. Section 111.010, Tax Code, is amended by adding  
4-56 Subsection (e) to read as follows:

4-57 (e) A judgment in a suit arising under this section remains  
4-58 valid and enforceable until satisfied and does not require periodic  
4-59 renewal. The provisions of Section 34.001, Civil Practice and  
4-60 Remedies Code, shall not apply to a judgment in a suit arising under  
4-61 this section.

4-62 SECTION 17. Section 111.016, Tax Code, is amended by adding  
4-63 Subsection (e) to read as follows:

4-64 (e) The comptroller may assess the responsible individual  
4-65 liable under Subsection (b) at any time before the expiration of one  
4-66 year after the later of the date the tax liability of the  
4-67 corporation, association, limited liability company, limited  
4-68 partnership, or other legal entity becomes final or the date the  
4-69 bankruptcy proceeding is closed or dismissed.

5-1 SECTION 18. Subchapter B, Chapter 111, Tax Code, is amended  
5-2 by adding Section 111.0511 to read as follows:

5-3 Sec. 111.0511. RESTRICTED OR CONDITIONAL PAYMENTS OF TAXES,  
5-4 PENALTIES, AND INTEREST PROHIBITED. Unless the restriction or  
5-5 condition is authorized by this title, a restriction or condition  
5-6 placed on a check in payment of taxes by the maker that purports to  
5-7 limit the amount of taxes owed to an amount less than that stated in  
5-8 the comptroller's records, or a restriction or condition placed on  
5-9 a check in payment of penalties and interest on delinquent taxes by  
5-10 the maker that purports to limit the amount of the penalties and  
5-11 interest to an amount less than the amount of penalties and interest  
5-12 accrued on the delinquent taxes is void.

5-13 SECTION 19. Section 111.0625, Tax Code, is amended to read  
5-14 as follows:

5-15 Sec. 111.0625. ELECTRONIC TRANSFER OF CERTAIN PAYMENTS.  
5-16 (a) The comptroller by rule shall require a taxpayer who paid  
5-17 \$100,000 or more during the preceding fiscal year in a category of  
5-18 payments required under this title to transfer payments in that  
5-19 category by means of electronic funds transfer in accordance with  
5-20 Section 404.095, Government Code, if the comptroller reasonably  
5-21 anticipates the person will pay at least that amount during the  
5-22 current fiscal year.

5-23 (b) The comptroller may by rule reduce the amount provided  
5-24 in Subsection (a) to \$50,000 or more.

5-25 SECTION 20. Subsection (a), Section 111.107, Tax Code, is  
5-26 amended to read as follows:

5-27 (a) Except as otherwise expressly provided, a person may  
5-28 request a refund or a credit or the comptroller may make a refund or  
5-29 issue a credit for the overpayment of a tax imposed by this title at  
5-30 any time before the expiration of the period during which the  
5-31 comptroller may assess a deficiency for the tax and not thereafter  
5-32 unless the refund or credit is requested:

5-33 (1) under Subchapter B of Chapter 112 and the refund is  
5-34 made or the credit is issued under a court order;

5-35 (2) under the provision of Section 111.104(c)(3)  
5-36 applicable to a refund claim filed after a jeopardy or deficiency  
5-37 determination becomes final; or

5-38 (3) under Chapter 162 ~~[153]~~, except Section  
5-39 162.126(f), 162.128(d), 162.228(f), or 162.230(d) ~~[153.1195(e),~~  
5-40 ~~153.121(d), 153.2225(e), or 153.224(d)]~~.

5-41 SECTION 21. Section 151.006, Tax Code, is amended to read as  
5-42 follows:

5-43 Sec. 151.006. "SALE FOR RESALE". "Sale for resale" means a  
5-44 sale of:

5-45 (1) tangible personal property or a taxable service to  
5-46 a purchaser who acquires the property or service for the purpose of  
5-47 reselling it in the United States of America or a possession or  
5-48 territory of the United States of America or in the United Mexican  
5-49 States in the normal course of business in the form or condition in  
5-50 which it is acquired or as an attachment to or integral part of  
5-51 other tangible personal property or taxable service;

5-52 (2) tangible personal property to a purchaser for the  
5-53 sole purpose of the purchaser's leasing or renting it in the United  
5-54 States of America or a possession or territory of the United States  
5-55 of America or in the United Mexican States in the normal course of  
5-56 business to another person, but not if incidental to the leasing or  
5-57 renting of real estate;

5-58 (3) tangible personal property to a purchaser who  
5-59 acquires the property for the purpose of transferring it in the  
5-60 United States of America or a possession or territory of the United  
5-61 States of America or in the United Mexican States as an integral  
5-62 part of a taxable service; or

5-63 (4) a taxable service performed on tangible personal  
5-64 property that is held for sale by the purchaser of the taxable  
5-65 service.

5-66 SECTION 22. Subsection (a), Section 151.011, Tax Code, is  
5-67 amended to read as follows:

5-68 (a) Except as provided by Subsection (c) of this section,  
5-69 "use" means the exercise of a right or power incidental to the

6-1 ownership of tangible personal property over tangible personal  
 6-2 property, including tangible personal property other than printing  
 6-3 [~~printed~~] material that has been processed, fabricated, or  
 6-4 manufactured into other property or attached to or incorporated  
 6-5 into other property transported into this state, and, except as  
 6-6 provided by Section 151.056(b) of this code, includes the  
 6-7 incorporation of tangible personal property into real estate or  
 6-8 into improvements of real estate whether or not the real estate is  
 6-9 subsequently sold.

6-10 SECTION 23. Subsection (b), Section 151.3111, Tax Code, is  
 6-11 amended to read as follows:

6-12 (b) Subsection (a) does not apply to the performance of a  
 6-13 service on:

6-14 (1) tangible personal property that would be exempted  
 6-15 solely because of the exempt status of the seller of the property;

6-16 (2) tangible personal property that is exempted solely  
 6-17 because of the application of Section 151.303, 151.304, or 151.306;

6-18 (3) motor vehicles, trailers, or semitrailers as  
 6-19 defined, taxed, or exempted by Chapter 152; [~~or~~]

6-20 (4) a taxable boat or motor as defined by Section  
 6-21 160.001; [~~-~~]

6-22 (6) tangible [~~Tangible~~] personal property exempt  
 6-23 under Section 151.326; or

6-24 (7) through December 31, 2007, tangible personal  
 6-25 property that is exempted solely because of the application of  
 6-26 Section 151.3162.

6-27 SECTION 24. Subsection (d), Section 151.3162, Tax Code, is  
 6-28 amended to read as follows:

6-29 (d) The exemption provided by Subsection (b) takes effect  
 6-30 January 1, 2008. Until that date, a person is entitled to an  
 6-31 exemption [~~a credit or refund~~] of a portion of the taxes paid under  
 6-32 this chapter on an item that after January 1, 2008, will be exempted  
 6-33 from the taxes imposed by this chapter under Subsection (b). The  
 6-34 amount of the credit or refund is determined as follows:

6-35 (1) for an item for which the taxable event occurs on  
 6-36 or after October 1, 2001, and before January 1, 2004, the taxpayer  
 6-37 is entitled to a refund or credit in an amount equal to 33 percent of  
 6-38 the tax paid on the item;

6-39 (2) for an item for which the taxable event occurs on  
 6-40 or after January 1, 2004, and before January 1, 2006, the taxpayer  
 6-41 is entitled to a refund or credit in an amount equal to 50 percent of  
 6-42 the tax paid on the item; and

6-43 (3) for an item for which the taxable event occurs on  
 6-44 or after January 1, 2006, and before January 1, 2008, the taxpayer  
 6-45 is entitled to a refund or credit in an amount equal to 75 percent of  
 6-46 the tax paid on the item.

6-47 SECTION 25. Subsection (c), Section 151.318, Tax Code, is  
 6-48 amended to read as follows:

6-49 (c) The exemption does not include:

6-50 (1) intraplant transportation equipment, including  
 6-51 intraplant transportation equipment used to move a product or raw  
 6-52 material in connection with the manufacturing process and  
 6-53 specifically including all piping and conveyor systems, provided  
 6-54 that the following remain eligible for the exemption:

6-55 (A) piping or conveyor systems that are a  
 6-56 component part of a single item of manufacturing equipment or  
 6-57 pollution control equipment eligible for the exemption under  
 6-58 Subsection (a)(2), (a)(4), or (a)(5);

6-59 (B) piping or conveyor systems through which the  
 6-60 product or an intermediate or preliminary product that will become  
 6-61 an ingredient or component part of the product is recycled or  
 6-62 circulated in a loop between the single item of manufacturing  
 6-63 equipment and the ancillary equipment that supports only that  
 6-64 single item of manufacturing equipment if the single item of  
 6-65 manufacturing equipment and the ancillary equipment operate  
 6-66 together to perform a specific step in the manufacturing process;  
 6-67 and

6-68 (C) piping or conveyor systems through which the  
 6-69 product or an intermediate or preliminary product that will become

7-1 an ingredient or component part of the product is recycled back to  
7-2 another single item of manufacturing equipment and its ancillary  
7-3 equipment in the same manufacturing process;

7-4 (2) hand tools;

7-5 (3) maintenance supplies not otherwise exempted under  
7-6 this section, maintenance equipment, janitorial supplies or  
7-7 equipment, office equipment or supplies, equipment or supplies used  
7-8 in sales or distribution activities, research or development of new  
7-9 products, or transportation activities;

7-10 (4) machinery and equipment or supplies to the extent  
7-11 not otherwise exempted under this section used to maintain or store  
7-12 tangible personal property; or

7-13 (5) tangible personal property used in the  
7-14 transmission or distribution of electricity, including  
7-15 transformers, cable, switches, breakers, capacitor banks,  
7-16 regulators, relays, reclosers, fuses, interruptors, reactors,  
7-17 arrestors, resistors, insulators, instrument transformers, and  
7-18 telemetry units not otherwise exempted under this section, and  
7-19 lines, conduit, towers, and poles.

7-20 SECTION 26. Subsection (b), Section 154.111, Tax Code, is  
7-21 amended to read as follows:

7-22 (b) An application for a permit required by this chapter  
7-23 must be accompanied by a fee of:

7-24 (1) \$300 for a bonded agent's permit;

7-25 (2) \$300 for a distributor's permit;

7-26 (3) \$200 for a wholesaler's permit;

7-27 (4) \$15 for each permit for a vehicle if the applicant  
7-28 is also applying for a permit as a bonded agent, distributor, or  
7-29 wholesaler or has received a current permit from the comptroller  
7-30 under Sections 154.101 and 154.110; ~~and~~

7-31 (5) \$180 for a retailer's permit; and

7-32 (6) \$300 for a manufacturer's permit.

7-33 SECTION 27. Section 154.509, Tax Code, is amended to read as  
7-34 follows:

7-35 Sec. 154.509. PERMITS. A person commits an offense if the  
7-36 person:

7-37 (1) as a manufacturer, distributor, bonded agent,  
7-38 importer, wholesaler, or retailer, receives or possesses  
7-39 cigarettes without having a valid permit;

7-40 (2) as a manufacturer, distributor, bonded agent,  
7-41 importer, wholesaler, or retailer, receives or possesses  
7-42 cigarettes without having a permit posted where it can be easily  
7-43 seen by the public;

7-44 (3) as a distributor or wholesaler, does not deliver  
7-45 an invoice to the purchaser as required by Section 154.203;

7-46 (4) as a manufacturer, distributor, bonded agent,  
7-47 importer, wholesaler, or retailer, sells cigarettes without having  
7-48 a valid permit; or

7-49 (5) as a manufacturer, bonded agent, or importer,  
7-50 stores, distributes, or delivers cigarettes in unstamped packages  
7-51 without having a valid permit.

7-52 SECTION 28. Subsection (b), Section 155.049, Tax Code, is  
7-53 amended to read as follows:

7-54 (b) An application for a permit required by this chapter  
7-55 must be accompanied by a fee of:

7-56 (1) \$300 for a bonded agent's permit;

7-57 (2) \$300 for a distributor's permit;

7-58 (3) \$200 for a wholesaler's permit;

7-59 (4) \$15 for each permit for a vehicle if the applicant  
7-60 is also applying for a permit as a bonded agent, distributor, or  
7-61 wholesaler or has received a current permit from the comptroller  
7-62 under Sections 155.041 and 155.048; ~~and~~

7-63 (5) \$180 for a retailer's permit; and

7-64 (6) \$300 for a manufacturer's permit.

7-65 SECTION 29. Section 155.207, Tax Code, is amended to read as  
7-66 follows:

7-67 Sec. 155.207. PERMITS. A person commits an offense if the  
7-68 person:

7-69 (1) as a manufacturer, distributor, bonded agent,

8-1 importer, wholesaler, or retailer, receives or possesses tobacco  
8-2 products without having a valid permit;

8-3 (2) as a manufacturer, distributor, bonded agent,  
8-4 importer, wholesaler, or retailer, receives or possesses tobacco  
8-5 products without having a permit posted where it can be easily seen  
8-6 by the public;

8-7 (3) as a distributor or wholesaler, does not deliver  
8-8 an invoice to the purchaser as required by Section 155.102;

8-9 (4) as a manufacturer, distributor, bonded agent,  
8-10 importer, wholesaler, or retailer, sells tobacco products without  
8-11 having a valid permit; or

8-12 (5) as a manufacturer, bonded agent, or importer,  
8-13 stores, distributes, or delivers tobacco products on which the tax  
8-14 has not been paid without having a valid permit.

8-15 SECTION 30. Subsection (b), Section 156.051, Tax Code, is  
8-16 amended to read as follows:

8-17 (b) The price of a room or space in a hotel does not include  
8-18 the cost of food served by the hotel and the cost of personal  
8-19 services performed by the hotel for the person except for those  
8-20 services related to cleaning and readying the room or space for use  
8-21 or possession.

8-22 SECTION 31. Section 156.052, Tax Code, is amended to read as  
8-23 follows:

8-24 Sec. 156.052. RATE OF TAX. The rate of the tax imposed by  
8-25 this chapter is six percent of the price paid for a room or space in  
8-26 a hotel.

8-27 SECTION 32. Section 156.053, Tax Code, is amended to read as  
8-28 follows:

8-29 Sec. 156.053. COLLECTION OF TAX. A person owning,  
8-30 operating, managing, or controlling a hotel, or subletting a room  
8-31 or space in a hotel, shall collect for the state the tax that is  
8-32 imposed by this chapter and that is calculated on the amount paid  
8-33 for the ~~the~~ room or space in the hotel.

8-34 SECTION 33. Section 162.001, Tax Code, is amended by  
8-35 amending Subdivisions (20), (43), and (55) and adding Subdivision  
8-36 (63) to read as follows:

8-37 (20) "Distributor" means a person who acquires motor  
8-38 fuel, ~~[from a licensed supplier, permissive supplier, or another~~  
8-39 ~~licensed distributor and]~~ who makes sales at wholesale, and whose  
8-40 activities may also include sales at retail.

8-41 (43) "Motor fuel transporter" means a person who  
8-42 transports gasoline, diesel fuel, ~~or~~ gasoline blended fuel, or  
8-43 other motor fuel outside the bulk transfer/terminal system by means  
8-44 of a transport vehicle, a railroad tank car, or a marine vessel.

8-45 (55) "Shipping document" means a delivery document  
8-46 issued ~~[by a terminal or bulk plant operator]~~ in conjunction with  
8-47 the sale, transfer, or transport ~~[removal]~~ of motor fuel ~~[from the~~  
8-48 ~~terminal or bulk plant]~~. A shipping document issued by a terminal  
8-49 operator shall be machine printed. All other shipping documents ~~[A~~  
8-50 ~~shipping document issued by a bulk plant]~~ shall be typed or  
8-51 handwritten on a preprinted form or machine printed.

8-52 (63) "Dyed diesel fuel retail dealer" means a dealer  
8-53 who acquires dyed diesel fuel from a licensed supplier, permissive  
8-54 supplier, or distributor for resale and delivery by the dealer into  
8-55 the fuel supply tanks of motorboats, refrigeration units, or other  
8-56 off-highway equipment at a retail location.

8-57 SECTION 34. Section 162.004, Tax Code, is amended by  
8-58 amending Subsections (a) and (b) and adding Subsections (a-1) and  
8-59 (h) to read as follows:

8-60 (a) A person may not transport in this state any motor fuel  
8-61 by barge, vessel, railroad tank car, or transport vehicle unless  
8-62 the person has a shipping document for the motor fuel that complies  
8-63 with this section.

8-64 (a-1) A terminal operator or operator of a bulk plant shall  
8-65 give a shipping document to the person who operates the barge,  
8-66 vessel, railroad tank car, or transport vehicle into which motor  
8-67 fuel is loaded at the terminal rack or bulk plant rack.

8-68 (b) A ~~[The]~~ shipping document ~~[issued by the terminal~~  
8-69 ~~operator or operator of a bulk plant]~~ shall contain the following



9-1 information and any other information required by the comptroller:  
 9-2 (1) the terminal control number of the terminal or  
 9-3 physical address of the bulk plant from which the motor fuel was  
 9-4 received;  
 9-5 (2) the name and license number of the purchaser;  
 9-6 (3) the date the motor fuel was loaded;  
 9-7 (4) the net gallons loaded, or the gross gallons  
 9-8 loaded if the fuel was purchased from a bulk plant;  
 9-9 (5) the destination state of the motor fuel, as  
 9-10 represented by the purchaser of the motor fuel or the purchaser's  
 9-11 agent; and  
 9-12 (6) a description of the product being transported.

9-13 (h) This section does not apply to motor fuel that is  
 9-14 delivered into the fuel supply tank of a motor vehicle.

9-15 SECTION 35. Subsections (a), (b), (d), and (e), Section  
 9-16 162.016, Tax Code, are amended to read as follows:

9-17 (a) A person may not import motor fuel to a destination in  
 9-18 this state or export motor fuel to a destination outside this state  
 9-19 by any means unless the person possesses a shipping document for  
 9-20 that fuel [~~created by the terminal or bulk plant at which the fuel~~  
 9-21 ~~was received~~]. The shipping document must include:

9-22 (1) the name and physical address of the terminal or  
 9-23 bulk plant from which the motor fuel was received for import or  
 9-24 export;

9-25 (2) the name and federal employer identification  
 9-26 number, or the social security number if the employer  
 9-27 identification number is not available, of the carrier transporting  
 9-28 the motor fuel;

9-29 (3) the date the motor fuel was loaded;

9-30 (4) the type of motor fuel;

9-31 (5) the number of gallons:

9-32 (A) in temperature-adjusted gallons if purchased  
 9-33 from a terminal for export or import; or

9-34 (B) in temperature-adjusted gallons or in gross  
 9-35 gallons if purchased from a bulk plant;

9-36 (6) the destination of the motor fuel as represented  
 9-37 by the purchaser of the motor fuel and the number of gallons of the  
 9-38 fuel to be delivered, if delivery is to only one state;

9-39 (7) the name, federal employer identification number,  
 9-40 license number, and physical address of the purchaser of the motor  
 9-41 fuel;

9-42 (8) the name of the person responsible for paying the  
 9-43 tax imposed by this chapter, as given to the terminal by the  
 9-44 purchaser if different from the licensed supplier or distributor;  
 9-45 [~~and~~]

9-46 (9) the destination state of each portion of a split  
 9-47 load of motor fuel if the motor fuel is to be delivered to more than  
 9-48 one state; and

9-49 (10) any other information that, in the opinion of the  
 9-50 comptroller, is necessary for the proper administration of this  
 9-51 chapter.

9-52 (b) The [~~terminal or bulk plant shall provide the~~] shipping  
 9-53 documents shall be provided to the importer or exporter.

9-54 (d) A seller, transporter, or receiver of [~~terminal, a bulk~~  
 9-55 ~~plant, the carrier, the licensed distributor or supplier, and the~~  
 9-56 ~~person that received the~~] motor fuel shall:

9-57 (1) retain a copy of the shipping document until at  
 9-58 least the fourth anniversary of the date the fuel is received; and

9-59 (2) provide a copy of the document to the comptroller  
 9-60 or any law enforcement officer not later than the 10th working day  
 9-61 after the date a request for the copy is received.

9-62 (e) An importer or exporter shall keep in the person's  
 9-63 possession the shipping document [~~issued by the terminal or bulk~~  
 9-64 ~~plant~~] when transporting motor fuel imported into this state or for  
 9-65 export from this state. The importer or exporter shall show the  
 9-66 document to the comptroller or a peace officer on request. The  
 9-67 comptroller may delegate authority to inspect the document to other  
 9-68 governmental agencies. The importer or exporter shall provide a  
 9-69 copy of the shipping document to the person that receives the fuel

10-1 when it is delivered.

10-2 SECTION 36. Subsections (b) and (c), Section 162.101, Tax  
10-3 Code, are amended to read as follows:

10-4 (b) A tax is imposed at the time gasoline is imported into  
10-5 this state, other than by a bulk transfer, for delivery to a  
10-6 destination in this state. The supplier or permissive supplier  
10-7 shall collect the tax imposed by this subchapter from the person who  
10-8 imports the gasoline into this state. If the seller is not a  
10-9 supplier or permissive supplier, then the person who imports the  
10-10 gasoline into this state shall pay the tax.

10-11 (c) A tax is imposed on the removal [~~sale or transfer~~] of  
10-12 gasoline from [~~in~~] the bulk transfer/terminal system in this state  
10-13 [~~by a supplier to a person who does not hold a supplier's license~~].  
10-14 The supplier shall collect the tax imposed by this subchapter from  
10-15 the person who orders the removal from [~~sale or transfer in~~] the  
10-16 bulk transfer terminal system.

10-17 SECTION 37. Subsection (d), Section 162.103, Tax Code, is  
10-18 amended to read as follows:

10-19 (d) A person who sells gasoline in this state, other than by  
10-20 a bulk transfer, on which tax has not been paid for any purpose  
10-21 other than a purpose exempt under Section 162.104 shall at the time  
10-22 of sale collect the tax from the purchaser or recipient of gasoline  
10-23 in addition to the selling price and is liable to this state for the  
10-24 taxes collected at the time and in the manner provided by this  
10-25 chapter.

10-26 SECTION 38. Subsection (d), Section 162.128, Tax Code, is  
10-27 amended to read as follows:

10-28 (d) A supplier, [~~or~~] permissive supplier, distributor,  
10-29 importer, exporter, or blender that determines taxes were  
10-30 erroneously reported and remitted or that paid more taxes than were  
10-31 due this state because of a mistake of fact or law may take a credit  
10-32 on the monthly tax report on which the error has occurred and tax  
10-33 payment made to the comptroller. The credit must be taken before  
10-34 the expiration of the applicable period of limitation as provided  
10-35 by Chapter 111.

10-36 SECTION 39. Subsections (b) and (c), Section 162.201, Tax  
10-37 Code, are amended to read as follows:

10-38 (b) A tax is imposed at the time diesel fuel is imported into  
10-39 this state, other than by a bulk transfer, for delivery to a  
10-40 destination in this state. The supplier or permissive supplier  
10-41 shall collect the tax imposed by this subchapter from the person who  
10-42 imports the diesel fuel into this state. If the seller is not a  
10-43 supplier or permissive supplier, the person who imports the diesel  
10-44 fuel into this state shall pay the tax.

10-45 (c) A tax is imposed on the removal [~~sale or transfer~~] of  
10-46 diesel fuel from [~~in~~] the bulk transfer/terminal system [~~in this~~  
10-47 ~~state by a supplier to a person who does not hold a supplier's~~  
10-48 ~~license~~]. The supplier shall collect the tax imposed by this  
10-49 subchapter from the person who orders the removal from [~~sale or~~  
10-50 ~~transfer in~~] the bulk transfer/terminal system.

10-51 SECTION 40. Subsection (a), Section 162.204, Tax Code, is  
10-52 amended to read as follows:

10-53 (a) The tax imposed by this subchapter does not apply to:  
10-54 (1) diesel fuel sold to the United States for its  
10-55 exclusive use, provided that the exemption does not apply to diesel  
10-56 fuel sold or delivered to a person operating under a contract with  
10-57 the United States;

10-58 (2) diesel fuel sold to a public school district in  
10-59 this state for the district's exclusive use;

10-60 (3) diesel fuel sold to a commercial transportation  
10-61 company that provides public school transportation services to a  
10-62 school district under Section 34.008, Education Code, and that uses  
10-63 the diesel fuel only to provide those services;

10-64 (4) diesel fuel exported by either a licensed supplier  
10-65 or a licensed exporter from this state to any other state, provided  
10-66 that:

10-67 (A) for diesel fuel in a situation described by  
10-68 Subsection (d), the bill of lading indicates the destination state  
10-69 and the supplier collects the destination state tax; or

11-1 (B) for diesel fuel in a situation described by  
 11-2 Subsection (e), the bill of lading indicates the destination state,  
 11-3 the diesel fuel is subsequently exported, and the exporter is  
 11-4 licensed in the destination state to pay that state's tax and has an  
 11-5 exporter's license issued under this subchapter;

11-6 (5) diesel fuel moved by truck or railcar between  
 11-7 licensed suppliers or licensed permissive suppliers and in which  
 11-8 the diesel fuel removed from the first terminal comes to rest in the  
 11-9 second terminal, provided that the removal from the second terminal  
 11-10 rack is subject to the tax imposed by this subchapter;

11-11 (6) diesel fuel delivered or sold into a storage  
 11-12 facility of a licensed aviation fuel dealer from which the diesel  
 11-13 fuel will be delivered solely into the fuel supply tanks of aircraft  
 11-14 or aircraft servicing equipment, or sold from one licensed aviation  
 11-15 fuel dealer to another licensed aviation fuel dealer who will  
 11-16 deliver the diesel fuel exclusively into the fuel supply tanks of  
 11-17 aircraft or aircraft servicing equipment;

11-18 (7) diesel fuel exported to a foreign country if the  
 11-19 bill of lading indicates the foreign destination and the fuel is  
 11-20 actually exported to the foreign country;

11-21 (8) dyed diesel fuel sold or delivered by a supplier to  
 11-22 another supplier and dyed diesel fuel sold or delivered by a  
 11-23 supplier or distributor into the bulk storage facility of a dyed  
 11-24 diesel fuel retail dealer or dyed diesel fuel bonded user or to a  
 11-25 purchaser who provides a signed statement as provided by Section  
 11-26 162.206;

11-27 (9) the volume of water, fuel ethanol, biodiesel, or  
 11-28 mixtures thereof that are blended together with taxable diesel fuel  
 11-29 when the finished product sold or used is clearly identified on the  
 11-30 retail pump, storage tank, and sales invoice as a combination of  
 11-31 diesel fuel and water, fuel ethanol, biodiesel, or mixtures  
 11-32 thereof;

11-33 (10) dyed diesel fuel sold by a supplier or permissive  
 11-34 supplier to a distributor, or by a distributor to another  
 11-35 distributor;

11-36 (11) dyed diesel fuel delivered by a license holder  
 11-37 into the fuel supply tanks of railway engines, motorboats, or  
 11-38 refrigeration units or other stationary equipment powered by a  
 11-39 separate motor from a separate fuel supply tank;

11-40 (12) dyed kerosene when delivered by a supplier,  
 11-41 distributor, or importer into a storage facility at a retail  
 11-42 business from which all deliveries are exclusively for heating,  
 11-43 cooking, lighting, or similar nonhighway use; or

11-44 (13) diesel fuel used by a person, other than a  
 11-45 political subdivision, who owns, controls, operates, or manages a  
 11-46 commercial motor vehicle as defined by Section 548.001,  
 11-47 Transportation Code, if the fuel:

11-48 (A) is delivered exclusively into the fuel supply  
 11-49 tank of the commercial motor vehicle; and

11-50 (B) is used exclusively to transport passengers  
 11-51 for compensation or hire between points in this state on a fixed  
 11-52 route or schedule.

11-53 SECTION 41. Subsection (a), Section 162.205, Tax Code, is  
 11-54 amended to read as follows:

11-55 (a) A person shall obtain the appropriate license or  
 11-56 licenses issued by the comptroller before conducting the activities  
 11-57 of:

11-58 (1) a supplier, who may also act as a distributor,  
 11-59 importer, exporter, blender, motor fuel transporter, or aviation  
 11-60 fuel dealer without securing a separate license, but who is subject  
 11-61 to all other conditions, requirements, and liabilities imposed on  
 11-62 those license holders;

11-63 (2) a permissive supplier, who may also act as a  
 11-64 distributor, importer, exporter, blender, motor fuel transporter,  
 11-65 or aviation fuel dealer without securing a separate license but who  
 11-66 is subject to all other conditions, requirements, and liabilities  
 11-67 imposed on those license holders;

11-68 (3) a distributor, who may also act as an importer,  
 11-69 exporter, blender, or motor fuel transporter without securing a

12-1 separate license, but who is subject to all other conditions,  
 12-2 requirements, and liabilities imposed on those license holders;

12-3 (4) an importer, who may also act as an exporter,  
 12-4 blender, or motor fuel transporter without securing a separate  
 12-5 license, but who is subject to all other conditions, requirements,  
 12-6 and liabilities imposed on those license holders;

12-7 (5) a terminal operator;

12-8 (6) an exporter;

12-9 (7) a blender;

12-10 (8) a motor fuel transporter;

12-11 (9) an aviation fuel dealer;

12-12 (10) an interstate trucker; [~~or~~]

12-13 (11) a dyed diesel fuel bonded user; or

12-14 (12) a dyed diesel fuel retail dealer.

12-15 SECTION 42. Section 162.206, Tax Code, is amended by adding  
 12-16 Subsection (k) to read as follows:

12-17 (k) Properly completed signed statements should be in the  
 12-18 possession of the licensed supplier or distributor at the time the  
 12-19 sale of dyed diesel fuel occurs. If the licensed supplier or  
 12-20 distributor is not in possession of the signed statements within 60  
 12-21 days after the date written notice requiring possession of them is  
 12-22 given to the licensed supplier or distributor by the comptroller,  
 12-23 exempt sales claimed by the licensed supplier or distributor that  
 12-24 require delivery of the signed statements shall be disallowed. If  
 12-25 the licensed supplier or distributor delivers the signed statements  
 12-26 to the comptroller within the 60-day period, the comptroller may  
 12-27 verify the reason or basis for the signed statements before  
 12-28 allowing the exempt sales. An exempt sale may not be granted on the  
 12-29 basis of signed statements delivered to the comptroller after the  
 12-30 60-day period.

12-31 SECTION 43. Subsection (b), Section 162.211, Tax Code, is  
 12-32 amended to read as follows:

12-33 (b) The license issued to an aviation fuel dealer or dyed  
 12-34 diesel fuel retail dealer is permanent and is valid until the  
 12-35 license is surrendered by the holder or canceled by the  
 12-36 comptroller.

12-37 SECTION 44. Section 162.213, Tax Code, is amended to read as  
 12-38 follows:

12-39 Sec. 162.213. LICENSE HOLDER STATUS LIST. (a) The  
 12-40 comptroller, on or before December 20 of each year, shall make  
 12-41 available to all license holders an alphabetical list of licensed  
 12-42 suppliers, permissive suppliers, distributors, aviation fuel  
 12-43 dealers, importers, exporters, blenders, terminal operators, dyed  
 12-44 diesel fuel retail dealers, and dyed diesel fuel bonded users. A  
 12-45 supplemental list of additions and deletions shall be made  
 12-46 available to the license holders each month. A current and  
 12-47 effective license or the list furnished by the comptroller is  
 12-48 evidence of the validity of the license until the comptroller  
 12-49 notifies license holders of a change in the status of a license  
 12-50 holder.

12-51 (b) A licensed supplier or permissive supplier who sells  
 12-52 diesel fuel tax-free to a supplier, [~~or~~] permissive supplier,  
 12-53 or aviation fuel dealer whose license has been canceled or revoked  
 12-54 under this chapter, or who sells dyed diesel fuel to a distributor,  
 12-55 dyed diesel fuel retail dealer, or dyed diesel fuel bonded user  
 12-56 whose license has been canceled or revoked under this chapter, is  
 12-57 liable for any tax due on diesel fuel sold after receiving notice of  
 12-58 the cancellation or revocation.

12-59 (c) The comptroller shall notify all license holders under  
 12-60 this chapter when a canceled or revoked license is subsequently  
 12-61 reinstated and include in the notice the effective date of the  
 12-62 reinstatement. Sales to a supplier, permissive supplier,  
 12-63 distributor, aviation fuel dealer, dyed diesel fuel retail dealer,  
 12-64 or dyed diesel fuel bonded user after the effective date of the  
 12-65 reinstatement may be made tax-free.

12-66 SECTION 45. Subsection (d), Section 162.215, Tax Code, is  
 12-67 amended to read as follows:

12-68 (d) An aviation fuel dealer and a dyed diesel fuel retail  
 12-69 dealer are [~~is~~] not required to file a return.

13-1 SECTION 46. Section 162.216, Tax Code, is amended by adding  
 13-2 Subsection (1-1) to read as follows:

13-3 (1-1) A dyed diesel fuel retail dealer shall keep:

13-4 (1) a record showing the number of gallons of:

13-5 (A) dyed and undyed diesel fuel inventories on  
 13-6 hand at the first of each month;

13-7 (B) dyed and undyed diesel fuel purchased or  
 13-8 received, showing the name of the seller and the date of each  
 13-9 purchase or receipt;

13-10 (C) dyed and undyed diesel fuel sold or used,  
 13-11 showing the date of the sale or use; and

13-12 (D) dyed and undyed diesel fuel lost by fire,  
 13-13 theft, or accident; and

13-14 (2) for dyed diesel fuel an invoice containing:

13-15 (A) the stamped or preprinted name and address of  
 13-16 the seller;

13-17 (B) the name of the purchaser;

13-18 (C) the date of delivery of the dyed diesel fuel;

13-19 (D) the number of gallons of dyed diesel fuel  
 13-20 delivered;

13-21 (E) the type or description of the off-highway  
 13-22 equipment into which the dyed diesel fuel is delivered; and

13-23 (F) a notice stating "DYED DIESEL FUEL,  
 13-24 NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE".

13-25 SECTION 47. Subsection (d), Section 162.230, Tax Code, is  
 13-26 amended to read as follows:

13-27 (d) A supplier, ~~or~~ permissive supplier, distributor,  
 13-28 importer, exporter, or blender that determines taxes were  
 13-29 erroneously reported and remitted or that paid more taxes than were  
 13-30 due to this state because of a mistake of fact or law may take a  
 13-31 credit on the monthly tax report on which the error has occurred and  
 13-32 tax payment made to the comptroller. The credit must be taken  
 13-33 before the expiration of the applicable period of limitation as  
 13-34 provided by Chapter 111.

13-35 SECTION 48. Subsections (d) and (e), Section 162.402, Tax  
 13-36 Code, are amended to read as follows:

13-37 (d) A person ~~operating a bulk plant or terminal~~ who issues  
 13-38 a shipping document that does not conform with the requirements of  
 13-39 Section 162.016(a) is liable to this state for a civil penalty of  
 13-40 \$2,000 or five times the amount of the unpaid tax, whichever is  
 13-41 greater, for each occurrence.

13-42 (e) A person ~~operating a terminal or bulk plant~~ who does  
 13-43 not post notice as required by Section 162.016(i) is liable to this  
 13-44 state for a civil penalty of \$100 for each day the notice is not  
 13-45 posted as required by Section 162.016(i).

13-46 SECTION 49. The heading to Section 162.409, Tax Code, is  
 13-47 amended to read as follows:

13-48 Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED  
 13-49 DISTRIBUTOR, ~~OR~~ LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

13-50 SECTION 50. Subsections (a) and (d), Section 162.409, Tax  
 13-51 Code, are amended to read as follows:

13-52 (a) A person commits an offense if:

13-53 (1) the person issues or passes a check or similar  
 13-54 sight order for the payment of money knowing that the issuer does  
 13-55 not have sufficient funds in or on deposit with the bank or other  
 13-56 drawee for the payment in full of the check or order as well as all  
 13-57 other checks or orders outstanding at the time of issuance;

13-58 (2) the payee on the check or order is a licensed  
 13-59 distributor, ~~or~~ licensed supplier, or permissive supplier; and

13-60 (3) the payment is for an obligation or debt that  
 13-61 includes a tax under this chapter to be collected by the licensed  
 13-62 distributor, ~~or~~ licensed supplier, or permissive supplier.

13-63 (d) A person who makes payment on an obligation or debt that  
 13-64 includes a tax under this chapter and pays with an insufficient  
 13-65 funds check issued to a licensed distributor, ~~or~~ licensed  
 13-66 supplier, or permissive supplier may be held liable for a penalty  
 13-67 equal to the total amount of tax not paid to the licensed  
 13-68 distributor, ~~or~~ licensed supplier, or permissive supplier.

13-69 SECTION 51. Section 171.052, Tax Code, is amended to read as

14-1 follows:

14-2 Sec. 171.052. CERTAIN CORPORATIONS. An insurance  
 14-3 organization[~~, title insurance company, or title insurance agent~~]  
 14-4 authorized to engage in insurance business in this state now  
 14-5 required to pay an annual tax under Chapter 221, 222, or 224 [~~4 or~~  
 14-6 ~~9~~], Insurance Code, measured by its gross premium receipts is  
 14-7 exempted from the franchise tax. A nonadmitted insurance  
 14-8 organization that is required to pay a gross premium receipts tax  
 14-9 during a tax year is exempted from the franchise tax for that same  
 14-10 tax year. [~~Farm mutuals, local mutual aid associations, and burial~~  
 14-11 ~~associations are not subject to the franchise tax.~~]

14-12 SECTION 52. Subsection (h), Section 171.109, Tax Code, is  
 14-13 amended to read as follows:

14-14 (h) A parent or investor corporation must use the cost  
 14-15 method of accounting in reporting and calculating the franchise tax  
 14-16 on its investments in subsidiary corporations or other investees.  
 14-17 In calculating the historical cost of an investment in a subsidiary  
 14-18 under the cost method of accounting, the cost may not be adjusted by  
 14-19 the preacquisition [The] retained earnings of the [a] subsidiary  
 14-20 corporation or other investee [before acquisition by the parent or  
 14-21 investor corporation may not be excluded from the cost of the  
 14-22 subsidiary corporation or investee to the parent or investor  
 14-23 corporation and must be included by the parent or investor  
 14-24 corporation in calculating its surplus].

14-25 SECTION 53. Section 171.110, Tax Code, is amended by adding  
 14-26 Subsection (m) to read as follows:

14-27 (m) Except as otherwise provided by this section, in  
 14-28 computing taxable earned surplus, a corporation is considered to  
 14-29 have made an election to use the same methods used in filing its  
 14-30 federal income tax return. The corporation shall report based on  
 14-31 its own financial condition. Consolidated reporting is prohibited.

14-32 SECTION 54. Subsection (b), Section 171.1121, Tax Code, is  
 14-33 amended to read as follows:

14-34 (b) Except as otherwise provided by this section, a  
 14-35 corporation shall use the same accounting methods to apportion  
 14-36 taxable earned surplus as it used to compute taxable earned surplus  
 14-37 [in computing reportable federal taxable income].

14-38 SECTION 55. Subsection (b), Section 183.053, Tax Code, is  
 14-39 amended to read as follows:

14-40 (b) The total of bonds, certificates of deposit, letters of  
 14-41 credit, or other security determined to be sufficient by the  
 14-42 comptroller of a permittee subject to the tax imposed by this  
 14-43 chapter shall be in an amount that the comptroller determines to be  
 14-44 sufficient to protect the fiscal interests of the state. The  
 14-45 comptroller may not set the amount of security at less than \$1,000  
 14-46 or more than the greater of \$100,000 or four times the amount of the  
 14-47 permittee's average monthly tax liability [\$50,000].

14-48 SECTION 56. Section 201.102, Tax Code, is amended to read as  
 14-49 follows:

14-50 Sec. 201.102. CASH SALES. If gas is sold for cash only, the  
 14-51 tax shall be computed on the producer's gross cash receipts.  
 14-52 Payments from a purchaser of gas to a producer for the purpose of  
 14-53 reimbursing the producer for taxes due under this chapter are not  
 14-54 part of the gross cash receipts [unless the reimbursement amount  
 14-55 for taxes due under this chapter is separately stated in the sales  
 14-56 contract].

14-57 SECTION 57. Section 201.352, Tax Code, is amended to read as  
 14-58 follows:

14-59 Sec. 201.352. UNLAWFUL PRODUCTION OR PURCHASE [REMOVAL] OF  
 14-60 GAS. On notice from the comptroller, no person may produce or make  
 14-61 payment for [remove] natural or casinghead gas from a lease in this  
 14-62 state if the owner or operator of the lease has failed to file a  
 14-63 report or pay a tax as required by this chapter. The comptroller  
 14-64 may request the Railroad Commission of Texas to place a seal on the  
 14-65 well or to otherwise disconnect the lease from any pipeline,  
 14-66 metering or custody transfer facility after notice to the operator  
 14-67 of the facility, and the operator shall not reopen or otherwise  
 14-68 reconnect the facility until authorized to do so by the railroad  
 14-69 commission.

15-1 SECTION 58. Section 321.203, Tax Code, is amended by  
 15-2 amending Subsections (b) through (e) and adding Subsection (n) to  
 15-3 read as follows:

15-4 (b) If a retailer has only one place of business in this  
 15-5 state, all of the retailer's retail sales of taxable items  
 15-6 [~~tangible personal property~~] are consummated at that place of  
 15-7 business except as provided by Subsection (e).

15-8 (c) If a retailer has more than one place of business in this  
 15-9 state, a sale of a taxable item [~~tangible personal property~~] by the  
 15-10 retailer is consummated at the retailer's place of business:

15-11 (1) from which the retailer ships or delivers the item  
 15-12 [~~property~~], if the retailer ships or delivers the item [~~property~~]  
 15-13 to a point designated by the purchaser or lessee; or

15-14 (2) where the purchaser or lessee takes possession of  
 15-15 and removes the item [~~property~~], if the purchaser or lessee takes  
 15-16 possession of and removes the item [~~property~~] from a place of  
 15-17 business of the retailer.

15-18 (d) If neither the possession of a taxable item [~~tangible~~  
 15-19 ~~personal property~~] is taken at nor shipment or delivery of the item  
 15-20 [~~property~~] is made from the retailer's place of business in this  
 15-21 state, the sale is consummated at:

15-22 (1) the retailer's place of business in this state  
 15-23 where the order is received; or

15-24 (2) if the order is not received at a place of business  
 15-25 of the retailer, the place of business from which the retailer's  
 15-26 salesman who took the order operates.

15-27 (e) A sale of a taxable item [~~tangible personal property~~] is  
 15-28 consummated at the location in this state to which the item  
 15-29 [~~property~~] is shipped or delivered or at which possession is taken  
 15-30 by the customer if transfer of possession of the item [~~property~~]  
 15-31 occurs at, or shipment or delivery of the item [~~property~~]  
 15-32 originates from, a location in this state other than a place of  
 15-33 business of the retailer and if:

15-34 (1) the retailer is an itinerant vendor who has no  
 15-35 place of business;

15-36 (2) the retailer's place of business where the  
 15-37 purchase order is initially received or from which the retailer's  
 15-38 salesman who took the order operates is outside this state; or

15-39 (3) the purchaser places the order directly with the  
 15-40 retailer's supplier and the item [~~property~~] is shipped or delivered  
 15-41 directly to the purchaser by the supplier.

15-42 (n) A sale of a service described in Section 151.0047 to  
 15-43 remodel, repair, or restore nonresidential real property is  
 15-44 consummated at the location of the job site. However, if the job  
 15-45 site includes areas in multiple municipalities, then the sale is  
 15-46 consummated at:

15-47 (1) the retailer's place of business in this state  
 15-48 where the order is received; or

15-49 (2) if the order is not received at a place of business  
 15-50 of the retailer, the place of business from which the retailer's  
 15-51 salesman who took the order operates.

15-52 SECTION 59. Subsection (c), Section 321.302, Tax Code, is  
 15-53 amended to read as follows:

15-54 (c)(1) If a municipality determines that a person doing  
 15-55 business in the municipality is not included in a comptroller's  
 15-56 report, the municipality shall report to the comptroller the name  
 15-57 and address of the person. Within 90 days after receiving the  
 15-58 report from a municipality, the comptroller shall send to the  
 15-59 municipality:

15-60 (A) [~~(1)~~] an explanation as to why the person is  
 15-61 not obligated for the municipal tax;

15-62 (B) [~~(2)~~] a statement that the person is  
 15-63 obligated for the municipal tax and the tax is delinquent; or

15-64 (C) [~~(3)~~] a certification that the person is  
 15-65 obligated for the municipal tax and that the full amount of the tax  
 15-66 due has been credited to the municipality's account.

15-67 (2) In this subsection, "full amount of the tax due"  
 15-68 means the amount of municipal tax to be allocated that can be  
 15-69 determined without a comptroller's audit of the person's records.

16-1 SECTION 60. Section 321.503, Tax Code, is amended to read as  
 16-2 follows:

16-3 Sec. 321.503. STATE'S SHARE. Before sending any money to a  
 16-4 municipality under this subchapter the comptroller shall deduct two  
 16-5 percent of the amount of the taxes collected within the  
 16-6 municipality during the period for which a distribution is made as  
 16-7 the state's charge for its services under this chapter and shall ~~subject to premiums payments under Section 321.501(c),~~ credit the  
 16-8 money deducted to the general revenue fund.

16-9 SECTION 61. Subsection (c), Section 323.102, Tax Code, is  
 16-10 amended to read as follows:

16-11 (c) A tax imposed under Section 323.105 of this code or  
 16-12 Chapter 326 or 383, Local Government Code, takes effect on the first  
 16-13 day of the first calendar quarter after the expiration of the first  
 16-14 complete calendar quarter occurring after the date on which the  
 16-15 comptroller receives a notice of the action as required by Section  
 16-16 323.405(b).

16-17 SECTION 62. Section 323.203, Tax Code, is amended by  
 16-18 amending Subsections (b) through (e) and adding Subsection (m) to  
 16-19 read as follows:

16-20 (b) If a retailer has only one place of business in this  
 16-21 state, all of the retailer's retail sales of taxable items  
 16-22 ~~[tangible personal property]~~ are consummated at that place of  
 16-23 business except as provided by Subsection (e).

16-24 (c) If a retailer has more than one place of business in this  
 16-25 state, a sale of a taxable item ~~[tangible personal property]~~ by the  
 16-26 retailer is consummated at the retailer's place of business:

16-27 (1) from which the retailer ships or delivers the item  
 16-28 ~~[property]~~, if the retailer ships or delivers the item ~~[property]~~  
 16-29 to a point designated by the purchaser or lessee; or

16-30 (2) where the purchaser or lessee takes possession of  
 16-31 and removes the item ~~[property]~~, if the purchaser or lessee takes  
 16-32 possession of and removes the item ~~[property]~~ from a place of  
 16-33 business of the retailer.

16-34 (d) If neither the possession of a taxable item ~~[tangible~~  
 16-35 ~~personal property]~~ is taken at nor shipment or delivery of the item  
 16-36 ~~[property]~~ is made from the retailer's place of business in this  
 16-37 state, the sale is consummated at:

16-38 (1) the retailer's place of business in this state  
 16-39 where the order is received; or

16-40 (2) if the order is not received at a place of business  
 16-41 of the retailer, the place of business from which the retailer's  
 16-42 salesman who took the order operates.

16-43 (e) A sale of a taxable item ~~[tangible personal property]~~ is  
 16-44 consummated at the location in this state to which the item  
 16-45 ~~[property]~~ is shipped or delivered or at which possession is taken  
 16-46 by the customer if transfer of possession of the item ~~[property]~~  
 16-47 occurs at, or shipment or delivery of the item ~~[property]~~  
 16-48 originates from, a location in this state other than a place of  
 16-49 business of the retailer and if:

16-50 (1) the retailer is an itinerant vendor who has no  
 16-51 place of business;

16-52 (2) the retailer's place of business where the  
 16-53 purchase order is initially received or from which the retailer's  
 16-54 salesman who took the order operates is outside this state; or

16-55 (3) the purchaser places the order directly with the  
 16-56 retailer's supplier and the item ~~[property]~~ is shipped or delivered  
 16-57 directly to the purchaser by the supplier.

16-58 (m) A sale of a service described in Section 151.0047 to  
 16-59 remodel, repair, or restore nonresidential real property is  
 16-60 consummated at the location of the job site. However, if the job  
 16-61 site includes areas in multiple municipalities, then the sale is  
 16-62 consummated at:

16-63 (1) the retailer's place of business in this state  
 16-64 where the order is received; or

16-65 (2) if the order is not received at a place of business  
 16-66 of the retailer, the place of business from which the retailer's  
 16-67 salesman who took the order operates.

16-68 SECTION 63. Section 323.503, Tax Code, is amended to read as  
 16-69



17-1 follows:

17-2 Sec. 323.503. STATE'S SHARE. Before sending any money to a  
17-3 county under this subchapter the comptroller shall deduct two  
17-4 percent of the amount of the taxes collected within the county  
17-5 during the period for which a distribution is made as the state's  
17-6 charge for its services under this chapter and shall[, ~~subject to~~  
17-7 ~~premiums payments under Section 323.501(e),~~] credit the money  
17-8 deducted to the general revenue fund.

17-9 SECTION 64. The heading to Section 16.001, Utilities Code,  
17-10 is amended to read as follows:

17-11 Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS [~~PUBLIC~~  
17-12 ~~UTILITIES~~].

17-13 SECTION 65. Subsections (a) and (b), Section 16.001,  
17-14 Utilities Code, are amended to read as follows:

17-15 (a) To defray the expenses incurred in the administration of  
17-16 this title, an assessment is imposed on each telecommunications  
17-17 utility, electric [~~public~~] utility, retail electric provider, and  
17-18 electric cooperative within the jurisdiction of the commission that  
17-19 serves the ultimate consumer, including each interexchange  
17-20 telecommunications carrier.

17-21 (b) An assessment under this section is equal to one-sixth  
17-22 of one percent of the telecommunications utility's, electric  
17-23 [~~public~~] utility's, retail electric provider's, or electric  
17-24 cooperative's gross receipts from rates charged to the ultimate  
17-25 consumer in this state.

17-26 SECTION 66. Subsection (b), Section 16.002, Utilities Code,  
17-27 is amended to read as follows:

17-28 (b) A telecommunications utility, electric [~~public~~]  
17-29 utility, retail electric provider, or electric cooperative may  
17-30 instead make quarterly payments due August 15, November 15,  
17-31 February 15, and May 15.

17-32 SECTION 67. The following sections of the Tax Code are  
17-33 repealed:

- 17-34 (1) Subsection (d), Section 151.103;
- 17-35 (2) Subsection (c), Section 151.202;
- 17-36 (3) Subsection (c), Section 162.016;
- 17-37 (4) Subsection (l), Section 321.203, as added by  
17-38 Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003;  
17-39 and

- 17-40 (5) Subsection (l), Section 323.203.

17-41 SECTION 68. The changes made by this Act to Section 201.102,  
17-42 Tax Code, apply to a refund claim or determination under Chapter  
17-43 111, Tax Code, without regard to whether the taxes that are the  
17-44 subject of the refund claim or determination were due before, on, or  
17-45 after the effective date of this Act.

17-46 SECTION 69. The changes made by this Act to Section 111.009,  
17-47 Tax Code, apply only to a petition for redetermination filed on or  
17-48 after the effective date of this Act.

17-49 SECTION 70. This Act takes effect October 1, 2005.

17-50 \* \* \* \* \*