

BILL ANALYSIS

H.B. 11
By: Cook, Byron
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There is a growing concern over fraud among convenience store operators in the area of sales tax reporting, where operators purport to collect taxes but do not remit the money to the state. The Comptroller's efforts to audit and collect unpaid sales taxes from those and other retail outlets are often constrained by the time-intensive, case-by-case practice of gathering information from wholesalers, performed under existing audit authority.

House Bill 11 authorizes the comptroller to require wholesalers to report data regarding sales to retailers of beer, wine, malt liquor and wholesalers or distributors of cigarettes, cigars, and tobacco products. Expanding and automating the comptroller's collection of hard data on retail purchases from wholesalers will help the comptroller identify audit targets; provide a reliable cross-check against reported sales; provide concrete evidence in fraud cases; and reduce manpower required to audit, estimate tax liabilities, and prosecute those attempting to defraud the state.

RULEMAKING AUTHORITY

This bill does not expressly grant additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Subchapter I, Chapter 151, Tax Code by adding Section 151.433, titled Reports by Wholesalers and Distributors of Beer, Wine, and Malt Liquor. This SECTION adds Section 151.433(a), Tax Code, providing definitions for "distributor," "retailer," and "wholesaler." A "distributor" is a person required to hold a general, local, or branch distributor's license under the Alcoholic Beverage Code. "Retailer" means a person required to hold a wine and beer retailer's permit; a wine and beer retailer's off-premise permit; a retail dealer's on-premise license; or a retail dealer's off-premise license under. A "wholesaler" is one who is required to hold a wholesaler's permit; a general Class B wholesaler's permit; or a local Class B wholesaler's permit.

This SECTION also adds Section 151.433(b), Tax Code, allowing the comptroller to require wholesalers or distributors of beer, wine or malt liquor to file a monthly report with the comptroller of their sales to retailers in this state. Subsection (c) requires that the report be filed on or before the 25th day of each month containing the required information for the preceding calendar month's sales. The report must contain the name and address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor; the taxpayer number assigned by the comptroller to the retailer, if known; the retailer's permit or license number assigned by the Texas Alcoholic Beverage Commission (TABC); and the monthly net sales made to the retailer by outlet by the wholesaler or distributor, including the quantity and units of beer, wine and malt liquor sold.

Subsection (d) requires that the reports be filed electronically with an exception for those wholesalers who demonstrate they are unable to comply with this requirement. If the comptroller determines that another filing method is more efficient than electronic transmission, the comptroller may establish procedures requiring its use by persons subject to this section.

This SECTION adds Subsection (e) to provide that all information contained in these reports is confidential and not subject to disclosure except under Section 111.006, Tax Code.

Subsection (f) allows the comptroller to impose civil or criminal penalties or to suspend or cancel one or more permits issued to the person if the person fails to file a report required by this section or fails to file a complete report. Subsection (g) allows the comptroller to notify the TABC of the failure, and the Commission may take administrative action against the person.

SECTION 2. Amends Subchapter F, Chapter 154, Tax Code by adding Section 154.212, titled Reports by Wholesalers and Distributors of Cigarettes. Section 154.212(a), Tax Code, allows the comptroller to require wholesalers and distributors of cigarettes to file a report each month with the comptroller of their sales to retailers in this state. Subsection (b) requires that the report be filed on or before the 25th day of each month containing the required information for the preceding calendar month's sales. The report must contain the name and address of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes; the taxpayer number assigned by the comptroller to the retailer, if known; the cigarette permit number of the outlet location delivered to; and the monthly net sales made by the wholesaler or distributor to the retailer including the quantity or units of cigarettes in stamped packages sold.

Subsection (c) requires that the reports be filed electronically with an exception for those wholesalers and distributors who demonstrate they are unable to comply with this requirement. If the comptroller determines that another filing method is more efficient than electronic transmission, the comptroller may establish procedures requiring its use by persons subject to this section.

This SECTION also adds Subsection (d) to provide that all information contained in these reports is confidential and not subject to disclosure under Chapter 552, Gov't Code, except under Section 111.006, Tax Code.

SECTION 3. Amends Subchapter D, Chapter 155, Tax Code, by adding Section 155.105, titled Reports by Wholesalers and Distributors of Cigars and Tobacco Products. Section 155.105(a), Tax Code, allows the comptroller to require wholesalers and distributors of cigars and tobacco products to file a monthly report with the comptroller of their sales to retailers in this state.

Subsection (b) requires that the report be filed on or before the 25th day of each month containing the required information for the preceding calendar month's sales. The report must contain the name and address of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products; the taxpayer number assigned by the comptroller to the retailer, if known; the tobacco permit number of the outlet location; and the monthly net sales made to the retailer by the wholesaler or distributor, including the quantity or units of cigars and tobacco products sold.

Subsection (c) requires that the reports be filed electronically with an exception for those wholesalers and distributors who demonstrate they are unable to comply with this requirement. If the comptroller determines that another filing method is more efficient than electronic transmission, the comptroller may establish procedures requiring its use by persons subject to this section.

This SECTION also adds subsection (d) to provide that all information contained in these reports is confidential and not subject to disclosure except under Section 111.006, Tax Code.

SECTION 4. This Act takes effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007.