

By: Haggerty

H.B. No. 2689

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of taxes on the sales of certain alcoholic beverages and taxable items related to mixed beverages and to the repeal of the mixed beverage gross receipts tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 2, Tax Code, is amended by adding Subtitle M to read as follows:

SUBTITLE M. TAX ON SALE OF CERTAIN LIQUOR

CHAPTER 261. MIXED BEVERAGE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 261.001. DEFINITIONS. In this chapter, "alcoholic beverage," "licensee," and "permittee" have the meanings assigned by Section 1.04, Alcoholic Beverage Code.

[Sections 261.002-261.050 reserved for expansion]

SUBCHAPTER B. TAX ON ALCOHOLIC BEVERAGES SOLD TO CERTAIN

PERMITTEES

Sec. 261.051. TAX IMPOSED. (a) A tax is imposed on the sale of an alcoholic beverage by a permittee or licensee to:

(1) a mixed beverage permittee;

(2) a private club registration permittee;

(3) a private club exemption certificate permittee;

(4) a private club late hours permittee;

(5) a daily temporary private club permittee;

(6) a private club registration permittee holding a

1 food and beverage certificate;

2 (7) a daily temporary mixed beverage permittee;

3 (8) a mixed beverage late hours permittee;

4 (9) a mixed beverage permittee holding a food and
5 beverage certificate; or

6 (10) a caterer permittee.

7 (b) The rate of the tax is \$_____ per liter of the alcoholic
8 beverage.

9 Sec. 261.052. COLLECTION OF TAX. (a) A permittee or
10 licensee that makes the sale on which the tax is imposed under this
11 chapter shall remit the tax to the comptroller, together with any
12 reports required by the comptroller.

13 (b) The tax on an alcoholic beverage is due and payable on
14 the 15th day of the month following the month in which the permittee
15 or licensee made the sale.

16 (c) The comptroller may adopt rules as necessary for the
17 collection of the tax imposed under this chapter.

18 Sec. 261.053. ENFORCEMENT. (a) The tax imposed under this
19 chapter is enforced in the same manner as the taxes imposed under
20 Subchapter A, Chapter 201, Alcoholic Beverage Code, are enforced.

21 (b) The comptroller may adopt rules as necessary for the
22 enforcement of the tax imposed under this chapter.

23 (c) Rules adopted under Subsection (b) may include rules
24 that require the affixing of a stamp to show payment of the tax. The
25 tax stamp to show payment of the tax under this chapter may be in
26 addition to any tax stamp required under Section 201.71, Alcoholic
27 Beverage Code.

1 Sec. 261.054. TAXES IMPOSED UNDER OTHER LAW. The tax
2 imposed under this chapter is in addition to the taxes imposed under
3 Chapter 201 or 203, Alcoholic Beverage Code.

4 [Sections 261.055-261.100 reserved for expansion]

5 SUBCHAPTER C. DISPOSITION OF PROCEEDS

6 Sec. 261.101. DISPOSITION OF PROCEEDS. Except as provided
7 by Section 261.102, all proceeds from the collection of the taxes
8 imposed under this chapter shall be deposited to the credit of the
9 general revenue fund.

10 Sec. 261.102. MIXED BEVERAGE TAX CLEARANCE FUND. (a) Not
11 later than the last day of the month following a calendar quarter,
12 the comptroller shall calculate the total amount of taxes received
13 during the quarter that were collected from the sale of alcoholic
14 beverages to permittees described by Sections 261.051(a)(1)
15 through (10) located outside an incorporated municipality within
16 each county and the total amount collected from the sale of
17 alcoholic beverages to those permittees located within each
18 incorporated municipality in each county.

19 (b) The comptroller shall issue to each county described in
20 Subsection (a) a warrant drawn on the general revenue fund in an
21 amount appropriated by the legislature that may not be greater than
22 10.7143 percent of taxes that were collected from the sale of
23 alcoholic beverages to permittees located within the county during
24 the quarter and shall issue to each incorporated municipality
25 described in Subsection (a) a warrant drawn on that fund in an
26 amount appropriated by the legislature that may not be greater than
27 10.7143 percent of taxes that were collected from the sale of

1 alcoholic beverages to permittees located within the incorporated
2 municipality during the quarter.

3 SECTION 2. Section 11.61(b), Alcoholic Beverage Code, is
4 amended to read as follows:

5 (b) The commission or administrator may suspend for not more
6 than 60 days or cancel an original or renewal permit if it is found,
7 after notice and hearing, that any of the following is true:

8 (1) the permittee has been finally convicted of a
9 violation of this code;

10 (2) the permittee violated a provision of this code or
11 a rule of the commission;

12 (3) the permittee was finally convicted of a felony
13 while holding an original or renewal permit;

14 (4) the permittee made a false or misleading statement
15 in connection with his original or renewal application, either in
16 the formal application itself or in any other written instrument
17 relating to the application submitted to the commission, its
18 officers, or employees;

19 (5) the permittee is indebted to the state for taxes,
20 fees, or payment of penalties imposed by this code, by a rule of the
21 commission, or by Chapter 261 [~~183~~], Tax Code;

22 (6) the permittee is not of good moral character or his
23 reputation for being a peaceable and law-abiding citizen in the
24 community where he resides is bad;

25 (7) the place or manner in which the permittee
26 conducts his business warrants the cancellation or suspension of
27 the permit based on the general welfare, health, peace, morals, and

1 safety of the people and on the public sense of decency;

2 (8) the permittee is not maintaining an acceptable
3 bond;

4 (9) the permittee maintains a noisy, lewd, disorderly,
5 or unsanitary establishment or has supplied impure or otherwise
6 deleterious beverages;

7 (10) the permittee is insolvent or mentally or
8 physically unable to carry on the management of his establishment;

9 (11) the permittee is in the habit of using alcoholic
10 beverages to excess;

11 (12) the permittee knowingly misrepresented to a
12 customer or the public any liquor sold by him;

13 (13) the permittee was intoxicated on the licensed
14 premises;

15 (14) the permittee sold or delivered an alcoholic
16 beverage to an intoxicated person;

17 (15) the permittee possessed on the licensed premises
18 an alcoholic beverage that he was not authorized by his permit to
19 purchase and sell;

20 (16) a package store or wine only package store
21 permittee transported or shipped liquor, or caused it to be
22 transported or shipped, into a dry state or a dry area within this
23 state;

24 (17) the permittee is residentially domiciled with a
25 person who has a financial interest in an establishment engaged in
26 the business of selling beer at retail, other than a mixed beverage
27 establishment, except as authorized by Section 22.06, 24.05, or

1 102.05 [~~of this code~~];

2 (18) the permittee is residentially domiciled with a
3 person whose permit or license was cancelled for cause within the
4 12-month period preceding his own application;

5 (19) the permittee is not a citizen of the United
6 States or has not been a citizen of Texas for a period of one year
7 immediately preceding the filing of his application, unless he was
8 issued an original or renewal permit on or before September 1, 1948,
9 and has been a United States citizen at some time;

10 (20) the permittee permitted a person to open a
11 container of alcoholic beverage or possess an open container of
12 alcoholic beverage on the licensed premises unless a mixed beverage
13 permit has been issued for the premises;

14 (21) the permittee failed to promptly report to the
15 commission a breach of the peace occurring on the permittee's
16 licensed premises;

17 (22) the permittee consumed an alcoholic beverage or
18 permitted one to be consumed on the licensed premises at a time when
19 the consumption of alcoholic beverages is prohibited by this code;
20 or

21 (23) the permittee sold, served, or delivered an
22 alcoholic beverage at a time when its sale is prohibited.

23 SECTION 3. Section 1504.256, Government Code, is amended to
24 read as follows:

25 Sec. 1504.256. PLEDGE OF MIXED BEVERAGE TAX RECEIPTS. (a)
26 The governing body of a municipality by official action may pledge
27 for the purposes provided by this subchapter a portion of the mixed

1 beverage tax that is remitted to the municipality under Section
2 261.102 [~~183.051~~], Tax Code.

3 (b) The total amount of mixed beverage tax receipts pledged
4 under Subsection (a) may not exceed an amount equal to 1-1/2 percent
5 of the total amount of taxes collected from the sale of alcoholic
6 beverages [~~gross receipts~~] subject to taxation under Chapter 261
7 [~~183~~], Tax Code, to [~~from~~] permittees located within the
8 municipality.

9 SECTION 4. Section 1504.257, Government Code, is amended to
10 read as follows:

11 Sec. 1504.257. SHORTAGE OF MIXED BEVERAGE TAX RECEIPTS. If
12 at the time of a remittance of mixed beverage tax receipts by the
13 comptroller under Section 261.102 [~~183.051~~], Tax Code, the amount
14 collected by the comptroller from taxes collected from the sale of
15 alcoholic beverages to permittees located in a municipality that
16 has pledged a portion of its mixed beverage tax receipts under
17 Section 1504.256 is less than the total amount required to be
18 collected from the sale of alcoholic beverages to those permittees
19 by Chapter 261 [~~183~~], Tax Code, then the amount to be pledged under
20 Section 1504.256 is an amount equal to the total amount actually
21 collected from the sale of alcoholic beverages to those permittees
22 in the municipality, multiplied by a fraction, the numerator of
23 which is the amount of mixed beverage tax receipts pledged under
24 Section 1504.256 for the quarterly period and the denominator of
25 which is the total amount required to be collected from the sale of
26 alcoholic beverages to those permittees located in the municipality
27 during that period.

1 SECTION 5. Section 151.302, Tax Code, is amended by
2 amending Subsection (a) and adding Subsection (e) to read as
3 follows:

4 (a) Except as provided by Subsection (e), the ~~[The]~~ sale for
5 resale of a taxable item is exempted from the taxes imposed by this
6 chapter.

7 (e) The sale to any permittee described by Sections
8 261.051(a)(1) through (10) of a taxable item intended to be used in
9 the preparation of a mixed beverage, as defined by Section 1.04,
10 Alcoholic Beverage Code, including ice and nonalcoholic beverages,
11 is not a sale for resale.

12 SECTION 6. Section 151.308(a), Tax Code, is amended to read
13 as follows:

14 (a) The following are exempted from the taxes imposed by
15 this chapter:

- 16 (1) oil as taxed by Chapter 202;
- 17 (2) sulphur as taxed by Chapter 203;
- 18 (3) motor fuels and special fuels as defined, taxed,
19 or exempted by Chapter 162 ~~[153]~~;
- 20 (4) cement as taxed by Chapter 181;
- 21 (5) motor vehicles, trailers, and semitrailers as
22 defined, taxed, or exempted by Chapter 152, other than a mobile
23 office as defined by Section 152.001(16);
- 24 (6) a mixed beverage, as that term is defined by
25 Section 1.04, Alcoholic Beverage Code, that is sold by a permittee
26 described by Sections 261.051(a)(1) through (10) ~~[beverages, ice,~~
27 ~~or nonalcoholic beverages and the preparation or service of these~~

1 ~~items if the receipts are taxable by Chapter 183];~~

2 (6-a) alcoholic beverages sold to any permittee
3 described by Sections 261.051(a)(1) through (10) that are taxable
4 by Chapter 261;

5 (7) alcoholic beverages when sold to the holder of a
6 private club registration permit or to the agent or employee of the
7 holder of a private club registration permit if the holder or agent
8 or employee is acting as the agent of the members of the club and if
9 the beverages are to be served on the premises of the club;

10 (8) oil well service as taxed by Subchapter E, Chapter
11 191; and

12 (9) insurance premiums subject to gross premiums
13 taxes.

14 SECTION 7. Chapter 183, Tax Code, is repealed.

15 SECTION 8. For purposes of Subchapter F, Chapter 1504,
16 Government Code, a pledge under Section 1504.256, Government Code,
17 as amended by this Act, by the governing body of a municipality of
18 mixed beverage tax receipts under Section 183.051, Tax Code, before
19 the effective date of this Act is considered a pledge of mixed
20 beverage tax receipts under Section 261.102, Tax Code, as added by
21 this Act, on and after the effective date of this Act.

22 SECTION 9. The change in law made by this Act does not
23 affect taxes imposed before the effective date of this Act, and the
24 law in effect before the effective date of this Act is continued in
25 effect for purposes of the liability for and collection of those
26 taxes.

27 SECTION 10. This Act takes effect September 1, 2007.