

BILL ANALYSIS

C.S.H.B. 255
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The comptroller of public accounts employs investigators to assist in the administration of the Tax Code, primarily by detecting and investigating crimes defined in that code. Certain case actions are publicized on the comptroller's website in an attempt to deter others contemplating tax fraud and to ensure the state's receipt of tax revenue. C.S.H.B. 255 attempts to maximize the efficiency of the comptroller's criminal investigation efforts and increase deterrence of tax fraud.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 255 amends the Code of Criminal Procedure to authorize the prosecution of criminal conspiracy, if the object of the conspiracy is an offense classified as a felony under the Tax Code, regardless of whether the offense was committed, to be in any county in which venue is proper under the Tax Code for the offense. The bill authorizes the prosecution of the offense of engaging in organized criminal activity, if the prosecution is based on a criminal offense classified as a felony under the Tax Code, to be in any county in which venue is proper under the Tax Code for the offense. The bill authorizes the prosecution of money laundering to be in the county in which the offense was committed or, if the prosecution is based on a criminal offense classified as a felony under the Tax Code, to be in any county in which venue is proper under the Tax Code for the offense.

C.S.H.B. 255 authorizes the state, in the trial of an offense under the Tax Code or an offense under the Penal Code related to the administration of taxes, to file a written request with the court in which the indictment or information is pending for the court to make affirmative findings regarding the commission of tax fraud. The bill requires the state to provide a copy of the written request to the defendant before the date the trial begins. The bill requires the court, if the state requests affirmative findings, to make the requested affirmative findings and enter the findings in the papers in the case if the court finds by clear and convincing evidence that the defendant's failure to pay a tax or file a report when due, as required by statutory provisions relating to state taxation and the Property Tax Code, was a result of fraud or an intent to evade the tax; that the defendant altered, destroyed, or concealed any record, document, or thing, or presented to the comptroller of public accounts any altered or fraudulent record, document, or thing, or otherwise engaged in fraudulent conduct for the apparent purpose of affecting the course or outcome of an audit, investigation, redetermination, or other proceeding before the comptroller; or that the defendant's failure to file a report under Tax Code provisions relating to motor fuel taxes or to pay a tax under the same provisions when due is attributable to fraud or an intent to evade the application of such provisions or a rule adopted under such provisions and Tax Code provisions relating to the comptroller's collection procedures.

C.S.H.B. 255 amends the Government Code to authorize the comptroller to accept money or

property under a federal equitable sharing program and to require the comptroller, in so doing, to comply with federal program requirements, including those governing accounting and the permissible use of an award. The bill entitles the comptroller to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that the comptroller believes is necessary for the enforcement and administration of Tax Code provisions relating to motor fuel taxes.

C.S.H.B. 255 amends the Penal Code to redefine "proceeds," as it relates to money laundering, to include funds acquired or derived directly or indirectly from, produced through, or realized through conduct that constitutes an offense under Tax Code provisions relating to a failure to pay taxes collected.

C.S.H.B. 255 reenacts and amends Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, to expand the conditions that constitute the offense of engaging in organized criminal activity to include the commission of or the conspiracy to commit any offense classified as a felony under the Tax Code with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a street gang.

C.S.H.B. 255 amends the Tax Code to make Penal Code provisions relating to criminal conspiracy, a renunciation defense, and organized crime applicable to offenses prescribed by the Tax Code. The bill authorizes an investigator employed by the comptroller under provisions relating to certain comptroller employees and contractors to investigate any criminal offense under the Tax Code or any criminal offense under any other law if the offense relates directly or indirectly to a tax, fee, penalty, or charge administered, collected, or enforced by the comptroller. The bill grants to an investigator commissioned by the comptroller as a peace officer the powers of a peace officer coextensive with the boundaries of the state.

C.S.H.B. 255 authorizes the comptroller or attorney general to use information or records made confidential by provisions of law relating to state taxation to enforce the criminal laws of this state or the United States.

C.S.H.B. 255 establishes that additional penalties on a delinquent tax or tax report for fraud or an intent to evade the tax or for fraudulent conduct for the apparent purpose of affecting the course or outcome of an audit, investigation, redetermination, or other proceeding before the comptroller are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud, including expenses incurred in conducting an investigation.

C.S.H.B. 255 adds the period during which an indictment or information is pending for a felony offense related to the administration of the Tax Code against any taxpayer or any person personally liable or potentially personally liable for the payment of the tax under provisions of law relating to personal liability for fraudulent tax evasion to the periods exempt from consideration in determining the expiration date for a period when a state tax may be assessed, collected, or refunded. The bill adds records in the form of sales receipts, invoices, or other equivalent records showing all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction during each reporting period to the records required to be kept in the form the comptroller requires by all sellers and other persons storing, using, or consuming in the state a taxable item purchased from a retailer. The bill specifies that, as it relates to this required recordkeeping, records of gross receipts from each rental, lease, taxable service, and taxable labor transaction occurring during each reporting period includes all such records, as well as records of gross receipts from each sale occurring during each reporting period.

C.S.H.B. 255 reduces from less than \$10,000 to less than \$50 the maximum amount of tax collected and not paid that makes an offense of failure to pay a collected tax a Class C

misdemeanor and reduces from \$10,000 to \$1,500 the minimum amount of tax collected and not paid that makes such an offense a state jail felony. The bill makes it a Class B misdemeanor if the amount of the tax collected and not paid is \$50 or more but less than \$500; a Class A misdemeanor if the amount of the tax collected and not paid is \$500 or more but less than \$1,500; and a first degree felony if the amount of tax collected and not paid is \$200,000 or more. The bill makes a conforming change relating to the maximum amount of tax collected and not paid for which the offense is a second degree felony. The bill authorizes conduct under which tax is collected and not paid pursuant to one scheme or continuous course of conduct to be considered as one offense and the amounts to be aggregated in determining the grade of the offense.

C.S.H.B. 255 makes the range of penalties for certain offenses relating to an exemption or resale certificate applicable to the offense of intentionally concealing, removing, or impairing the verity or legibility of an exemption or resale certificate or unreasonably impeding the availability of such a certificate.

C.S.H.B. 255 makes it an offense to intentionally fail to produce to the comptroller records required to be kept and requested by the comptroller in an investigation or audit in certain periods that document a taxpayer's taxable sale of beer, wine, malt liquor, cigarettes, cigars, and tobacco products that the taxpayer obtained using a resale certificate. The bill establishes specified penalties for the offense ranging from a Class C misdemeanor to a second degree felony depending on the amount of the tax avoided by the use of the resale certificate. The bill establishes as an affirmative defense to prosecution that the items listed for purchase on the resale certificate had not been resold at the time of the comptroller's request for records in an investigation or audit. The bill authorizes conduct under which comptroller records are not produced related to one scheme or continuous course of conduct to be considered as one offense and the amounts of tax avoided by the use of a resale certificate to be aggregated in determining the grade of the offense.

C.S.H.B. 255 establishes that a forfeiture proceeding as it relates to the enforcement of the cigarette tax or the cigars and tobacco products tax is an in rem proceeding. The bill authorizes the comptroller, as an alternative to selling at public or private sale in any commercially reasonable manner property forfeited to the state following seizure under provisions of law relating to the enforcement of the cigarette tax or the cigars and tobacco products tax, to retain the property for official use by the comptroller's criminal investigation division. The bill authorizes such property to later be sold by the comptroller. The bill establishes that the comptroller is considered the owner, under Transportation Code provisions relating to vehicle title and registration, of a vehicle seized and forfeited in the enforcement of the cigarette tax or the cigars and tobacco products tax and retained by the comptroller. The bill requires the Texas Department of Motor Vehicles to issue a certificate of title for such a vehicle to the comptroller and authorizes the comptroller to maintain, repair, use, and operate the vehicle with money appropriated for current operations.

C.S.H.B. 255 authorizes the comptroller to photograph cigarettes or tobacco products seized in the enforcement of the cigarette tax or the cigars and tobacco products tax before their sale and specifies that the state, in a proceeding arising out of provisions relating to such taxes, including a criminal proceeding, is not required to produce the actual cigarettes or tobacco products. The bill establishes that the photographs are admissible in evidence under rules of law governing the admissibility of photographs and are as admissible as are the cigarettes and tobacco products themselves. The bill establishes that a person's rights of discovery and inspection of tangible physical evidence are satisfied if the photographs are made available to the person by the state on order of any court or other entity having jurisdiction over the proceeding.

C.S.H.B. 255 establishes that additional penalties for a failure to pay a motor fuel tax or file a report relating to such a tax that is attributable to fraud or an intent to evade the application of statutory provisions relating to motor fuel taxes, or a rule adopted under such provisions, or

statutory provisions relating to tax collection procedures are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud, including expenses incurred in conducting an investigation.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 255 omits a provision included in the original authorizing the comptroller of public accounts to commission as a peace officer under provisions of the Code of Criminal Procedure any investigator that the comptroller employs. The substitute establishes that additional penalties on a delinquent tax or tax report for fraud or an intent to evade the tax or for fraudulent conduct for the apparent purpose of affecting the course or outcome of an audit, investigation, redetermination, or other proceeding before the comptroller, rather than penalties on a delinquent tax or tax report, as in the original, are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud.

C.S.H.B. 255 adds records in the form of sales receipts, invoices, or other equivalent records, rather than sales receipts, invoices, and other pertinent papers, as in the original, showing all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction during each reporting period to the records required to be kept in the form the comptroller requires by all sellers and other persons storing, using, or consuming in the state a taxable item purchased from a retailer.

C.S.H.B. 255 makes it an offense to intentionally, rather than knowingly, as in the original, fail to produce to the comptroller records required to be kept or requested by the comptroller in an investigation or audit in certain periods that document a taxpayer's taxable sale of beer, wine, malt liquor, cigarettes, cigars, and tobacco products that the taxpayer obtained using a resale certificate.

C.S.H.B. 255 establishes that additional penalties for a failure to pay a motor fuel tax or file a report relating to such a tax that is attributable to fraud or an intent to evade the tax, rather than penalties for a failure to pay a motor fuel tax or file a report relating to such a tax, as in the original, are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud.