

BILL ANALYSIS

C.S.H.B. 3640
By: Pitts
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Taxpayers required to collect certain taxes remit their collections to the comptroller of public accounts on a periodic basis, as required by law. These tax collections are deposited to the credit of the general revenue fund, with certain exceptions. C.S.H.B. 3640 seeks to require taxpayers to prepay a certain portion of their fiscal year 2014 tax collections in fiscal year 2013, which, interested parties assert, will result in a net gain of revenue for the 2012-2013 biennium and be available for appropriation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 12 of this bill.

ANALYSIS

C.S.H.B. 3640 amends the Alcoholic Beverage Code to require an airline beverage permittee and a passenger train beverage permittee to remit, in August 2013, a tax prepayment of airline or passenger train beverage taxes, as applicable, due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the Texas Alcoholic Beverage Commission (TABC). The bill specifies that the prepayment is an addition to the amount the permittee is otherwise required to remit during August and requires the permittee to remit the additional payment in conjunction with the report and payment otherwise required during that month. The bill authorizes a permittee who remits the additional payment to take a credit in the amount of the additional payment against the next payment due under the TABC reporting system.

C.S.H.B. 3640 requires each TABC permittee who is liable for taxes on ale and malt liquor or taxes on liquor other than ale and malt liquor and each TABC licensee who is liable for the beer tax to remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee or licensee is otherwise required to remit during August 2013. The bill requires each TABC permittee or licensee to remit the tax prepayment in August 2013. The bill specifies that the prepayment of the permittee or licensee is in addition to the amount the permittee or licensee is otherwise required to remit in August and requires the permittee or licensee to remit the additional payment in conjunction with the report and payment otherwise required during that month. The bill authorizes a permittee or licensee who remits the additional payment to take a credit in the amount of the additional payment against the next payment due.

C.S.H.B. 3640 amends the Tax Code to require a taxpayer who is required to pay sales, excise, or use taxes on or before the 20th day of August, who pays such taxes by electronic funds transfer, and who does not prepay the taxpayer's tax liability to remit to the comptroller of public accounts, in August 2013, a tax prepayment that is equal to 25 percent of the amount the taxpayer is otherwise required to remit during August 2013. The bill specifies that the prepayment is in addition to the amount the taxpayer is otherwise required to remit during

August and requires the taxpayer to remit the additional payment in conjunction with the payment otherwise required during that month. The bill makes provisions of law relating to the discount for a prepayment of tax liability inapplicable with respect to the additional payment required by the bill. The bill authorizes a taxpayer who remits the additional payment to take a credit in the amount of the additional payment against the next payment due.

C.S.H.B. 3640 authorizes a taxpayer to report a credit in the amount of any sales, excise, or use tax prepayment remitted to the comptroller as required by the bill on the tax report that is otherwise due in September 2013. The bill removes a provision making a tax report for sales, excise, or use taxes to be paid on or before August 20 due on or before the 20th day of the following month.

C.S.H.B. 3640 requires each licensed distributor and licensed importer required to remit the gasoline tax or the diesel fuel tax to remit to the supplier or permissive supplier, as applicable, on August 28, 2013, a tax prepayment in an amount equal to 25 percent of the tax for gasoline or diesel fuel, as applicable, removed at the terminal rack during July 2013 by the distributor or importer, without accounting for any credit or allowance to which the distributor or importer is entitled. The bill requires the applicable supplier to remit the tax prepayment to the comptroller by electronic funds transfer on August 30, 2013, without accounting for any credit or allowance to which the supplier is entitled. The bill makes certain provisions of law relating to credits or allowances to which the supplier is entitled inapplicable to the tax prepayment required by the bill. The bill authorizes a distributor or importer to take a credit against the amount of the tax for gasoline or diesel fuel, as applicable, removed at a terminal rack during August 2013 that is required to be remitted to the applicable supplier in September 2013. The bill establishes that the amount of the credit is equal to the amount of any tax prepayment remitted by the distributor or importer. The bill makes these provisions applicable to a supplier or an affiliate of a supplier who removes gasoline or diesel fuel at the terminal rack for distribution to the same extent and in the same manner that the provisions apply to a licensed distributor or licensed importer.

C.S.H.B. 3640 prohibits the comptroller from allocating, before the first workday of September 2013, revenue from the collection of gasoline and diesel fuel taxes that is otherwise required to be allocated. The bill requires the allocation of such revenue as otherwise provided not later than the fifth workday of September 2013.

C.S.H.B. 3640 requires a large taxable entity to pay a prepayment of the franchise tax with the report originally due May 15, 2014, in an amount equal to 25 percent of the amount of the tax imposed and reported as due for the regular annual period covered by the report originally due May 15, 2012, regardless of the date the taxable entity actually files the report. The bill requires the taxable entity to remit the tax prepayment to the comptroller not later than July 31, 2013, in the manner prescribed by rules adopted by the comptroller and accompanied by any information required by the comptroller. The bill authorizes a large taxable entity that remits the tax prepayment to take a credit on the report originally due on May 15, 2014, in the amount of the tax prepayment.

C.S.H.B. 3640 makes a large taxable entity that fails to remit the tax prepayment on or before July 31, 2013, liable for a penalty of 10 percent of the estimated amount of the tax prepayment due and specifies that this liability is in lieu of a penalty for failure to pay the franchise tax or file the required report. The bill establishes that a franchise tax prepayment is not considered a report for purposes of provisions of law relating to franchise tax reports and records, forfeiture of corporate and business privileges, or forfeiture of a charter or certificate of authority. The bill requires the comptroller to deposit revenue received from the franchise tax prepayments to the credit of the general revenue fund and to deposit revenue received from tax payments remitted with reports originally due on May 15, 2014, in accordance with provisions of law relating to the disposition of franchise tax revenue. The bill defines "large taxable entity" as a taxable entity that, on July 31, 2013, is doing business in Texas and that is required by rules adopted by the comptroller to make the taxable entity's tax payment for the regular annual period for which a

report is originally due May 15, 2013, regardless of the date the taxable entity actually filed the report, by electronic funds transfer.

C.S.H.B. 3640 requires certain TABC permittees who are liable for mixed beverage taxes to remit, in August 2013, a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013. The bill specifies that the prepayment is in addition to the amount the permittee is otherwise required to remit during August and requires the permittee to remit the additional payment in conjunction with the return and payment otherwise required during that month. The bill authorizes a permittee who remits the additional payment to take a credit in the amount of the additional payment against the next payment due.

C.S.H.B. 3640 makes conforming changes and sets its provisions to expire September 1, 2015. The bill clarifies that the expiration of its amendments does not affect tax liability accruing before the expiration of those amendments and establishes that that liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3640 differs from the original by requiring an airline beverage permittee and a passenger train beverage permittee to remit a tax prepayment equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 in addition to the amount otherwise required to be remitted, whereas the original requires the permittees to remit a prepayment, accompanied by a report, in one of two certain amounts at the permittee's election. The substitute differs from the original by requiring the permittee to remit the prepayment in August 2013, whereas the original requires the permittee to remit the prepayment not later than the last workday of August of each odd-numbered year.

C.S.H.B. 3640 differs from the original by requiring an airline beverage permittee and a passenger train beverage permittee to remit the additional payment in conjunction with the report and payment otherwise required, whereas the original authorizes the report and payment required by the bill to be made in conjunction with the report and payment ordinarily required. The substitute omits provisions included in the original requiring a permittee to file a supplemental report. The substitute differs from the original by authorizing a permittee who remits the additional payment to take a credit in the amount of the additional payment against the next payment due, whereas the original authorizes a permittee who files a supplemental report to take a credit in the amount of an overpayment.

C.S.H.B. 3640 omits provisions included in the original requiring each permittee who is liable for taxes on ale and malt liquor or taxes on liquor other than ale and malt liquor and each licensee who is liable for the beer tax to file in August the report that would otherwise have been due on or before September. The substitute differs from the original by requiring each such permittee or licensee to remit a tax prepayment of taxes due that is equal to 25 percent of the amount the permittee or licensee is otherwise required to remit during 2013 in addition to the amount the permittee or licensee is otherwise required to remit, whereas the original requires the permittee or licensee to remit a prepayment in one of two certain amounts at the permittee's or licensee's election. The substitute differs from the original by requiring the permittees or licensees to remit the prepayment in August 2013, whereas the original requires the permittee or licensee to remit the prepayment with the required report.

C.S.H.B. 3640 differs from the original by requiring each permittee who is liable for taxes on ale

and malt liquor or taxes on liquor other than ale and malt liquor and each licensee who is liable for the beer tax to remit the additional payment in conjunction with the report and payment otherwise required, whereas the original authorizes the report and payment required by it to be made in conjunction with the report and payment ordinarily required. The substitute omits provisions included in the original requiring a permittee or licensee to file a supplemental report. The substitute differs from the original by authorizing a permittee or licensee who remits the additional payment to take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the Texas Alcoholic Beverage Commission (TABC), whereas the original authorizes a permittee or licensee who files a supplemental report to take a credit in the amount of an overpayment.

C.S.H.B. 3640 contains a provision not included in the original requiring certain taxpayers required to pay sales, excise, or use taxes to remit a tax prepayment and contains provisions not included in the original relating to such a prepayment. The substitute contains a provision not included in the original removing a statutory provision making a tax report for sales, excise, or use taxes to be paid on or before August 20 due on or before the 20th day of the following month.

C.S.H.B. 3640 omits provisions included in the original requiring each person who is liable for collecting and remitting the gasoline or diesel fuel tax to file in August the return, containing certain estimates, that would otherwise have been due on or before September. The substitute differs from the original by requiring each licensed distributor and licensed importer required to remit the tax to remit to the supplier or permissive supplier, as applicable, a tax prepayment in an amount equal to 25 percent of the tax for gasoline or diesel fuel, as applicable, removed at the terminal rack during July 2013 by the distributor or importer, whereas the original requires the person liable for collecting and remitting the gasoline or diesel fuel tax to remit a payment equal to one of two certain amounts, at the person's election. The substitute contains provisions not included in the original requiring the applicable supplier to remit the tax prepayment to the comptroller and making certain provisions inapplicable to the required tax prepayment.

C.S.H.B. 3640 omits provisions included in the original authorizing the return and payment required of the distributor or importer to be filed in conjunction with the return and payment otherwise due and requiring the person to file a supplemental report. The substitute differs from the original by authorizing a distributor or importer to take a credit against the amount of the tax otherwise required to be remitted and setting the amount of such a credit, whereas the original authorizes the person filing the supplemental return to take a credit in the amount of the overpayment against the next payment due. The substitute contains provisions not included in the original making its provisions applicable to a supplier or an affiliate of a supplier who removes gasoline or diesel fuel at the terminal rack for distribution to the same extent and in the same manner that the provisions apply to a licensed distributor or licensed importer. The substitute omits provisions included in the original authorizing the comptroller of public accounts to adopt rules prescribing the information required on a return or a supplemental return.

C.S.H.B. 3640 differs from the original by prohibiting the comptroller from allocating, before the first workday of September 2013, revenue from the collection of gasoline and diesel fuel taxes that is otherwise required to be allocated and requiring the allocation of such revenue as otherwise provided not later than the fifth workday of September 2013, whereas the original prohibits the comptroller from allocating, before the first workday of September 2013, such revenue remitted to the comptroller during July and August of each odd-numbered year and requires the allocation of such revenue as otherwise provided not later than the fifth workday of September.

C.S.H.B. 3640 differs from the original by defining "large taxable entity" as a taxable entity that, on July 31, 2013, is doing business in Texas and that is required by rules adopted by the comptroller to make the taxable entity's tax payment for the regular annual period for which a report is originally due May 15, 2013, regardless of the date the taxable entity actually filed the

report, by electronic funds transfer, whereas the original defines the term as a taxable entity for which the amount of the franchise tax reported as due for the preceding regular annual period exceeds the median amount of franchise tax reported as due of all taxable entities for the same annual period and prohibits a taxable entity from being considered a large taxable entity before the regular annual period following the taxable entity's first regular annual period.

C.S.H.B. 3640 omits a provision included in the original requiring the comptroller to compute the median franchise tax liability of all taxable entities and post the information for a taxable entity's use in determining whether the entity is a large taxable entity. The substitute differs from the original by requiring a large taxable entity to pay a prepayment of the franchise tax with the report originally due May 15, 2014, in an amount equal to 25 percent of the amount of the tax imposed and reported as due for the regular annual period covered by the report originally due May 15, 2012, and to remit the tax prepayment to the comptroller, whereas the original requires a large taxable entity to pay the franchise tax covering the regular annual period in five payments. The substitute differs from the original by authorizing a large taxable entity that remits the tax prepayment to take a credit on the report originally due on May 15, 2014, in the amount of the tax prepayment, whereas the original authorizes the entity to deduct the amount of an overpayment or request a refund.

C.S.H.B. 3640 contains provisions not included in the original relating to the liability of a large taxable entity that does not remit the required payment, the consideration of a large taxable entity's prepayment as a report for purposes of existing law, and the manner in which the comptroller is required to deposit revenue received from such prepayments.

C.S.H.B. 3640 omits provisions included in the original authorizing a large taxable entity to request an extension for making the required tax payment, requiring the comptroller to adopt certain rules, and establishing the due date of a large taxable entity's report and certain references.

C.S.H.B. 3640 omits a provision included in the original requiring certain TABC permittees who are liable for mixed beverage taxes to file in August the return, containing certain estimates, that would otherwise have been due on or before September. The substitute differs from the original by requiring such a permittee to remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 in addition to the amount the permittee is otherwise required to remit, whereas the original requires the permittee to remit a payment equal to one of two certain amounts, at the permittee's election. The substitute differs from the original by requiring the permittee to remit the prepayment in August 2013, whereas the original requires the permittee to remit the payment with a required report. The substitute differs from the original by requiring the permittee to remit the additional payment in conjunction with the report and payment otherwise required, whereas the original authorizes the report and required payment to be made in conjunction with the report and payment ordinarily required.

C.S.H.B. 3640 omits a provision included in the original requiring a permittee to file a supplemental report. The substitute differs from the original by authorizing a permittee who remits the additional payment to take a credit in the amount of the additional payment against the next payment due, whereas the original authorizes a permittee who files a supplemental report to take a credit in the amount of an overpayment. The substitute omits a provision included in the original establishing that its provisions prevail to the extent of any conflict with specified provisions of law relating to the mixed beverage tax.

C.S.H.B. 3640 contains provisions not included in the original setting the bill's provisions to expire September 1, 2015, clarifying that this expiration does not affect tax liability accruing before the expiration, and providing for the continuation of that liability.

C.S.H.B. 3640 differs from the original by making the bill effective September 1, 2011, whereas

the original makes the bill effective except as otherwise provided by the original bill, on passage, or, if the bill does not receive the necessary vote, September 1, 2011.