

By: Zerwas

H.B. No. 2547

A BILL TO BE ENTITLED

AN ACT

relating to the definition of little cigars and tobacco products tax on little cigars.

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

SECTION 1. Section 155.001, Tax Code, is amended to read as follows:

Sec. 155.001 DEFINITIONS. In this chapter:

(1) "Bonded agent" means a person in this state who is an agent of a person outside this state and receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the person outside this state.

(2) "Cigar" means a roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper. The term shall include little cigars.

(3) "Commercial business location" means the entire premises occupied by a permit applicant or a person required to hold a permit under this chapter.

(4) "Common carrier" means a motor carrier registered under Chapter 643, Transportation Code, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or a successor agency to the Interstate Commerce Commission.

1 (5) "Consumer" means a person who possesses tobacco
2 products for personal consumption.

3 (6) "Distributor" means a person who:

4 (A) receives tobacco products for the purpose of
5 making a first sale in this state from a manufacturer outside the
6 state or within the state or otherwise brings or causes to be
7 brought into this state tobacco products for sale, use, or
8 consumption;

9 (B) manufactures or produces tobacco products;
10 or

11 (C) is an importer or import broker.

12 (7) "Export warehouse" means a person in this state
13 who receives tobacco products from manufacturers and stores the
14 tobacco products for the purpose of making sales to authorized
15 persons for resale, use, or consumption outside the United States.

16 (8) "First sale" means, except as otherwise provided
17 by this chapter:

18 (A) the first transfer of possession in
19 connection with a purchase, sale, or any exchange for value of
20 tobacco products in intrastate commerce;

21 (B) the first use or consumption of tobacco
22 products in this state; or

23 (C) the loss of tobacco products in this state
24 whether through negligence, theft, or other unaccountable loss.

25 (9) "Importer" or "import broker" means a person who
26 ships, transports, or imports into this state tobacco products
27 manufactured or produced outside the United States for the purpose

1 of making a first sale in this state.

2 (10) "Little cigar" means any roll for smoking made
3 wholly or in part of tobacco if such product uses an integrated
4 cellulose acetate or other similar filter and is wrapped in any
5 substance containing tobacco, other than natural leaf tobacco.

6 (11~~[0]~~) "Manufacturer" means a person who
7 manufactures or produces tobacco products and sells tobacco
8 products to a distributor.

9 (12~~[1]~~) "Manufacturer's representative" means a
10 person employed by a manufacturer to sell or distribute the
11 manufacturer's tobacco products.

12 (13~~[2]~~) "Permit holder" means a bonded agent,
13 distributor, wholesaler, manufacturer, importer, or retailer
14 required to obtain a permit under Section 155.041.

15 (14~~[3]~~) "Place of business" means:

16 (A) a commercial business location where tobacco
17 products are sold;

18 (B) a commercial business location where tobacco
19 products are kept for sale or consumption or otherwise stored; or

20 (C) a vehicle from which tobacco products are
21 sold.

22 (15~~[4]~~) "Retailer" means a person who engages in the
23 practice of selling tobacco products to consumers and includes the
24 owner of a coin-operated vending machine.

25 (16~~[5]~~) "Tobacco product" means:

26 (A) a cigar;

27 (B) smoking tobacco, including granulated,

1 plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable
2 for smoking in a pipe or as a cigarette;

3 (C) chewing tobacco, including Cavendish, Twist,
4 plug, scrap, and any kind of tobacco suitable for chewing;

5 (D) snuff or other preparations of pulverized
6 tobacco; or

7 (E) an article or product that is made of tobacco
8 or a tobacco substitute and that is not a cigarette.

9 (17[6]) "Wholesaler" means a person, including a
10 manufacturer's representative, who sells or distributes tobacco
11 products in this state for resale but who is not a distributor.

12 SECTION 2. Section 155.021, Tax Code, is amended to read as
13 follows:

14 (a) A tax is imposed and becomes due and payable when a
15 permit holder receives cigars for the purpose of making a first sale
16 in this state.

17 (b) The tax rates are:

18 (1) the same rate per thousand on little cigars as is
19 imposed per thousand on cigarettes under Section 154.021(b)(1) of
20 this code, as such section may be amended from time to time, or
21 under any successor provision taxing cigarettes; [~~(1) one cent per~~
22 ~~10 or fraction of 10 on cigars, weighing three pounds or less per~~
23 ~~thousand,~~]

24 (2) \$7.50 per thousand on cigars, other than little
25 cigars, that [+

26 ~~(A) weigh more than three pounds per thousand,~~

27 ~~and~~

1 ~~(B)~~ sell at factory list price, exclusive of any
2 trade discount, special discount, or deal, for 3.3 cents or less
3 each;

4 (3) \$11 per thousand on cigars, other than little
5 cigars, that:

6 ~~[(A) weigh more than four [three] pounds per~~
7 ~~thousand.]~~

8 (~~B~~A) sell at factory list price, exclusive of
9 any trade discount, special discount, or deal, for more than 3.3
10 cents each; and

11 (~~C~~B) contain no substantial amount of
12 nontobacco ingredients; and

13 (4) \$15 per thousand on cigars, other than little
14 cigars, that:

15 ~~[(A) weigh more than four [three] pounds per~~
16 ~~thousand.]~~

17 (~~B~~A) sell at factory list price, exclusive of
18 any trade discount, special discount, or deal, for more than 3.3
19 cents each; and

20 (~~C~~B) contain a substantial amount of
21 nontobacco ingredients.

22 (c) Cigars taxed under Subsections (b)(3) and (b)(4) of this
23 section are presumed to contain a substantial amount of nontobacco
24 ingredients unless the report on the cigars required by Section
25 155.111 of this code is accompanied by an affidavit stating that
26 specific cigars described in the report do not contain sheet
27 wrapper, sheet binder, or sheet filler. If the manufacturer

1 prepares the report, the manufacturer shall make the affidavit. If
2 the distributor prepares the report, the manufacturer and the
3 distributor shall make the affidavit.

4 (d) The revenue from the fee imposed by this section shall
5 be deposited to the credit of the property tax relief fund under
6 Section 403.109, Government Code.

7 SECTION 3. This Act takes effect September 1, 2011.