

BILL ANALYSIS

C.S.H.B. 3536
By: Otto
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the early 1990s, Texas and several other states were involved in lawsuits against the tobacco industry to recover money spent to treat tobacco-related illnesses. This resulted in a settlement agreement involving most of the states and separate settlement agreements for certain states, including Texas. This settlement structure resulted in several classes of manufacturers, depending on whether a manufacturer joined one of the settlement agreements. C.S.H.B. 3536 seeks to ensure evenhanded treatment of the different groups of tobacco companies, to prevent certain manufacturers from undermining the state's policy of preventing underage smoking by offering tobacco products at substantially lower prices than other manufacturers, and to protect the programs currently being funded by the tobacco settlement agreement.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts and the attorney general in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3536 amends the Health and Safety Code to impose a fee on the sale, use, consumption, or distribution in Texas of the following: cigarettes of a manufacturer that did not sign a tobacco settlement agreement if a tax stamp is required to be affixed to a package of those cigarettes; non-settling manufacturer cigarettes that are sold, purchased, or distributed in Texas but that are not required to have a tax stamp affixed to a package of those cigarettes; non-settling manufacturer cigarette tobacco products that are subject to the state tax on tobacco products other than cigars; and non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in Texas but are not subject to such a tax. The bill makes the fee inapplicable to cigarettes or cigarette tobacco products that a manufacturer that signed a tobacco settlement agreement claims as its own and that are included in computing payments to be made by that settling manufacturer under the agreement; to cigarettes and cigarette tobacco products that are sold into another state for resale to consumers outside of Texas, provided that the sale is reported to the state into which the cigarettes are sold; and to cigarettes or cigarette tobacco products sold to an Indian tribe for resale to members of that tribe within that tribe's Indian country. The bill establishes that the fee is in addition to any other privilege, license, fee, or tax required or imposed by Texas law and that the fee is imposed, collected, paid, administered, and enforced in the same manner as the cigarette tax and the cigars and tobacco products tax. The bill requires the fee to be collected only once as to each cigarette or cigarette tobacco product on which it is due.

C.S.H.B. 3536 sets the rate of the fee at 2.75 cents for each non-settling manufacturer cigarette and each 0.09 ounces of non-settling manufacturer cigarette tobacco product sold, used, consumed, or distributed in Texas during the 2013 calendar year. The bill requires the comptroller of public accounts, beginning in January 2014, and in January of each subsequent year, to compute the rate of the fee applicable during that calendar year by increasing the rate in the manner prescribed by the bill. The bill establishes the method for computing the rate of the

fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer for periods before and after the effective date of a credit amendment.

C.S.H.B. 3536 sets out the additional information that a distributor required to file a distributor's report for cigarette tax and the cigars and tobacco products tax purposes is required to include in that report and sets out related provisions. The bill requires a distributor to include with the required report the fee imposed under the bill's provisions based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report and calculated using the rate specified by the bill's provisions. The bill requires the report requirement to be enforced in the same manner as the requirement to deliver to or file with the comptroller certain other reports. The bill entitles a distributor that remits the monthly fee to a stamping allowance of three percent of the face value of all stamps purchased for providing the service of affixing stamps to cigarette packages. The bill requires the comptroller to publish and maintain on the comptroller's Internet website a list of the names and brand families of settling manufacturers; a list of each non-settling manufacturer that is a subsequent participating manufacturer or is not a subsequent participating manufacturer; and the effective date of any credit amendment.

C.S.H.B. 3536 requires a non-settling manufacturer, if cigarettes or cigarette tobacco products of the manufacturer were not offered for sale or distribution in Texas on September 1, 2013, to provide certain specified information relating to the non-settling manufacturer to the attorney general on a form prescribed by the attorney general. The bill requires the attorney general to make the specified information provided available to the comptroller.

C.S.H.B. 3536 requires cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in Texas in violation of the bill's provisions, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under the bill's provisions is not made, to be treated as cigarettes or cigarette tobacco products for which the cigarette tax or the cigars and tobacco products tax have not been paid and makes the distributor or non-settling manufacturer subject to all penalties related to such taxes.

C.S.H.B. 3536 requires a non-settling manufacturer to appoint and engage a resident agent for service of process. The bill entitles the comptroller or attorney general to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance with the bill's provisions. The bill requires the comptroller, on request, to report annually to the independent auditor or other entities responsible for making calculations or other determinations under a tobacco settlement agreement or the master settlement agreement the volume of cigarettes on which the fee is paid, itemized by cigarette manufacturer and brand family. The bill requires the revenue from the fee imposed by the bill's provisions to be deposited in the state treasury to the credit of the general revenue fund and requires all fees paid by a manufacturer under the bill's provisions to apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment. The bill establishes that its provisions apply without regard to statutory provisions relating to the tax imposed on the first sale of cigarettes or any other law that might be read to create an exemption for interstate sales. The bill establishes that its provisions do not apply to a chewing tobacco and authorizes the comptroller and attorney general to issue rules and regulations as necessary to carry out or enforce the bill's provisions.

C.S.H.B. 3536 amends the Tax Code to set the rate of the tobacco products tax imposed on chewing tobacco at 80 cents per ounce and a proportionate rate on all fractional parts of an ounce, rather than 1.22 per ounce and a proportionate rate on all fractional parts of an ounce.

C.S.H.B. 3536 requires a non-settling manufacturer that is offering cigarettes or cigarette tobacco products for sale or distribution in Texas on September 1, 2013, to provide to the attorney general on a form prescribed by the attorney general, not later than September 30, 2013, certain specified information relating to the non-settling manufacturer and requires the attorney

general to make the specified information available to the comptroller. The bill defines, among other terms, "brand family," "cigarette," "cigarette tobacco product," "credit amendment," "Indian country," "manufacturer," "released claim" and "released claims," and "subsequent participating manufacturer."

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3536 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

- (1) recover health care costs to the state imposed by non-settling manufacturers;
- (2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;
- (3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;
- (4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on cigarettes and cigarette tobacco products of non-settling manufacturers that already make payments on Texas sales under the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

- (1) recover health care costs to the state imposed by non-settling manufacturers;
- (2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;
- (3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;
- (4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on non-settling manufacturers that already make payments on Texas sales under the master settlement agreement until a credit

Master Settlement Agreement until an amendment to that agreement that will provide those manufacturers with a credit for payments to Texas, as defined herein, is effective; and

(5) provide funding for any purpose the legislature determines.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Monthly fee" or "fee" means the fee imposed on a distributor pursuant to Section 161.605, based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included on the distributor's returns under that section, and calculated using the fee rate under Section 161.604.

(2) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(3) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) a roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(B) tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(C) a roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(4) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

amendment to that agreement that will provide those manufacturers with a credit for payments to Texas is effective; and

(5) provide funding for any purpose the legislature determines.

Sec. 161.602. DEFINITIONS. In this subchapter:

(6) "Fee" or "monthly fee" means the fee imposed under Section 161.603.

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(5) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this act with respect to their products in a form agreed upon by (1) Settling States (as defined in the master settlement agreement) with aggregate Allocable Shares (as defined in the master settlement agreement) equal to at least 99.937049%; (2) the original participating manufacturers (as defined in the master settlement agreement); and (3) subsequent participating manufacturers whose aggregate market share, expressed as a percentage, of the total number of individual cigarettes sold in the fifty United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and, in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of calculation of subsequent participating manufacturer market share under this act, 0.09 ounces of "roll your own" tobacco shall constitute one cigarette.

(6) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication or assembly of cigarettes or cigarette tobacco products, for sale or distribution. For purposes of this

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(7) "Indian" means a member of an Indian tribe.

(8) "Indian country" means:

(A) all land within the limits of any Indian reservation under the jurisdiction of the United States government, including rights-of-way running through the reservation and notwithstanding any patent; and

(B) any land to which title is either held in trust by the United States for the benefit of an Indian tribe or by an individual Indian and over which an Indian tribe exercises governmental power.

(9) "Indian tribe" means a tribal entity recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian tribe.

(10) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or distribution. For purposes of this subchapter,

subchapter, the term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998 by 46 states and leading United States tobacco manufacturers, as amended to date;

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement as described in section 161.602(14).

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement as described in Section 161.602(14).

(13) "Subsequent participating manufacturer" shall have the same meaning as provided for that term in the master settlement agreement, except such term shall exclude any settling manufacturer under the tobacco settlement agreement described in section 161.602(14)(B). Provided that a manufacturer shall not be treated as a subsequent participating manufacturer for purposes of section 161.604(c) unless it has provided to the comptroller notice and proof, in such form and manner as the comptroller may prescribe, that it is a subsequent participating manufacturer.

(14) "Tobacco settlement agreement" means either (A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-

the term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(11) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(12) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement described by Subdivision (18).

(13) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(14) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(15) "Released claim" means:

(A) "released claims" as that term is defined in the agreement described by Subdivision (18)(A); and

(B) all claims encompassed in Paragraph 16 of the agreement described by Subdivision (18)(B).

(16) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement described by Subdivision (18).

(17) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except that the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (18)(B). A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Section 161.604(c) unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

(18) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco

91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997 with respect to the matter described in paragraph (A), but only as to companies that signed such agreement on that date.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by such settling manufacturer, under the tobacco settlement agreement described in section 161.602(14)(A).

(c) The fee imposed by this subchapter does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold pursuant to 15 U.S.C. section 376.

(d) The fee imposed by this subchapter is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(e) Except as otherwise provided by this subchapter, the fee imposed by this subchapter is imposed, collected, paid, administered, and enforced in the same

Co., et al., No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161.602(18)(A).

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products sold to an Indian tribe for resale to members of that tribe within that tribe's Indian country.

(e) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(f) Except as otherwise provided by this subchapter, the fee imposed by this section is imposed, collected, paid, administered, and

manner as the taxes imposed by Chapters 154 and 155, Tax Code, as appropriate.

(f) The fee imposed by this subchapter shall be collected only once as to each cigarette or cigarette tobacco product on which it is due.

Sec. 161.604. RATE OF FEE.

Sec. 161.605. RETURN AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, along with the report required by those sections, make a return which includes, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States; and

(4) any other information the comptroller considers necessary or appropriate to determine the amount of the monthly fee or to enforce this subchapter.

(b) The information required by subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

(c) The return required under this Section shall include a calculation of the monthly fee, which shall be due and payable by the

enforced in the same manner as the taxes imposed by Chapter 154 or 155, Tax Code, as appropriate.

(g) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which it is due.

Sec. 161.604. RATE OF FEE

Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161.603 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Section 161.604.

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

distributor with the return for that reporting period. To assist distributors in calculating the monthly fee, the comptroller shall publish and maintain on the comptroller's Internet website a current list of the names and brands of the settling manufacturers, non-settling manufacturers that are subsequent participating manufacturers, non-settling manufacturers that are not subsequent participating manufacturers, and the effective date of any credit amendment.

(d) The requirement to make a return under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Information obtained from a return provided under subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to that manufacturer or to the authorized representative of the manufacturer.

Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE.

Sec. 161.607. PENALTIES FOR NONCOMPLIANCE.

Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.

Sec. 161.609 AUDIT OR INSPECTION.

Sec. 161.610. COMPTROLLER INFORMATION SHARING.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

(1) a list of the names and brand families of settling manufacturers;

(2) a list of each non-settling manufacturer that:

(A) is a subsequent participating manufacturer; or

(B) is not a subsequent participating manufacturer; and

(3) the effective date of any credit amendment.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is, subject to Section 154.051, Tax Code, entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section 154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the manufacturer or to the authorized representative of the manufacturer.

Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE.

Sec. 161.607. PENALTIES FOR NONCOMPLIANCE.

Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.

Sec. 161.609. AUDIT OR INSPECTION.

Sec. 161.610. COMPTROLLER

Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.

Sec. 161.612. APPLICATION OF SUBCHAPTER. This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

SECTION 2. (a) Not later than September 30, 2013, a non-settling manufacturer, as that term is defined by Section 161.602, Health and Safety Code, as added by this Act, that is offering cigarettes or cigarette tobacco products for sale or distribution in this state on September 1, 2013, shall provide to the attorney general on a form prescribed by the attorney general:

- (1) the non-settling manufacturer's complete name, address, and telephone number;
- (2) the date that the non-settling manufacturer began offering cigarettes or cigarette tobacco products for sale or distribution in this state;
- (3) the names of the brand families of the cigarettes or cigarette tobacco products that the non-settling manufacturer offers for sale or distribution in this state;
- (4) a statement that the non-settling manufacturer intends to comply with Subchapter V, Chapter 161, Health and Safety Code, as added by this Act; and
- (5) the name, address, telephone number, and signature of an officer of the non-settling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under subsection (a) of this section available to the comptroller.

INFORMATION SHARING.

Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.

Sec. 161.612. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment.

Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section 155.001(15)(C), Tax Code.

SECTION 3. Substantially same as introduced version.

SECTION 3. The comptroller and the attorney general shall have the authority to adopt rules as necessary to carry out or enforce Chapter 161, Subchapter V.

No equivalent provision.

No equivalent provision.

SECTION 4. This Act takes effect September 1, 2013.

SECTION 1. Sec. 161.614. RULES. The comptroller and attorney general may issue rules and regulations as necessary to carry out or enforce this subchapter.

SECTION 2. Section 155.0211(b), Tax Code, is amended to read as follows:

(b) Except as provided by Subsection (c), the tax rate for:

(1) each can or package of a tobacco product other than cigars or chewing tobacco is \$1.22 per ounce and a proportionate rate on all fractional parts of an ounce; and

(2) chewing tobacco is 80 cents per ounce and a proportionate rate on all fractional parts of an ounce.

SECTION 4. The change in law made by this Act to Section 155.0211, Tax Code, does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, 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.

SECTION 5. Same as introduced version.