By:  Guillen (Senate Sponsor - Hinojosa) H.B. No. 3475

(In the Senate - Received from the House April 29, 2019; April 30, 2019, read first time and referred to Committee on Finance; May 13, 2019, reported favorably by the following vote: Yeas 14, Nays 0; May 13, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Nelson               X

Hinojosa             X

Bettencourt          X

Birdwell             X

Campbell             X

Flores               X

Hancock              X

Huffman              X

Kolkhorst            X

Nichols              X

Perry                X

Taylor               X

Watson               X

West                 X

Whitmire                       X

A BILL TO BE ENTITLED

AN ACT

relating to the administration, collection, and remittance of the cigars and tobacco products tax; requiring a permit.

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

SECTION 1.  Section 155.001, Tax Code, is amended by amending Subdivisions (1), (6), (7), (8), (9), (10), (11), (12), (13), (14), and (15) and adding Subdivisions (6-a) and (13-a) to read as follows:

(1)  "Bonded agent" means a person in this state who is a third-party [~~an~~] agent of a manufacturer [~~person~~] outside this state and who 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 manufacturer [~~person outside this state~~].

(6)  "Distributor" means a person who:

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

(B)  manufactures or produces tobacco products; or

(C)  is an importer [~~or import broker~~].

(6-a)  "Engage in business" means, in relation to tobacco products, engaging by a person, either directly or through a representative, in any of the following activities:

(A)  selling tobacco products in or into this state;

(B)  using a warehouse or another location to store tobacco products; or

(C)  otherwise conducting through a physical presence tobacco product-related business in this state.

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

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

(A)  the first transfer of possession in connection with a purchase, sale, or any exchange for value of tobacco products in or into this state, which:

(i)  includes the sale of tobacco products by:

(a)  a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(b)  a manufacturer in this state who transfers the tobacco products in this state; and

(ii)  does not include:

(a)  the sale of tobacco products by a manufacturer outside this state to a distributor in this state; or

(b)  the transfer of tobacco products from a manufacturer outside this state to a bonded agent in this state [~~in intrastate commerce~~];

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

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

(9)  "Importer" [~~or "import broker"~~] means a person who ships, transports, or imports into this state tobacco products manufactured or produced outside the United States for the purpose of making a first sale in this state.

(10)  "Manufacturer" means a person who manufactures, fabricates, or assembles tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of tobacco products, for sale or distribution [~~or produces tobacco products and sells tobacco products to a distributor~~].

(11)  "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products for which the tax imposed under this chapter has been paid.

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

(13)  "Place of business" means:

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

(B)  a commercial business location where tobacco products are kept for sale or consumption or otherwise stored; [~~or~~]

(C)  a vehicle from which tobacco products are sold; or

(D)  a vending machine from which tobacco products are sold.

(13-a)  "Raw tobacco" means any part of the tobacco plant, including the tobacco leaf or stem, that is harvested from the ground and is not a tobacco product as the term is defined in this chapter.

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

(15)  "Tobacco product" means:

(A)  a cigar;

(B)  smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;

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

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

(E)  an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette or an e-cigarette as defined by Section 161.081, Health and Safety Code.

SECTION 2.  Subchapter B, Chapter 155, Tax Code, is amended by adding Sections 155.0212, 155.025, and 155.028 to read as follows:

Sec. 155.0212.  LIABILITY OF PERMITTED DISTRIBUTOR. A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax imposed by this chapter.

Sec. 155.025.  MANUFACTURING EXEMPTION. Raw tobacco sold to a permitted manufacturer in this state for the purpose of using the tobacco in manufacturing is not subject to the taxes imposed by this chapter.

Sec. 155.028.  IMPACT OF TAX. The ultimate consumer or user in this state bears the impact of the tax imposed by this chapter. If another person pays the tax, the amount of the tax is added to the price charged to the ultimate consumer or user.

SECTION 3.  Sections 155.041(a), (b), and (h), Tax Code, are amended to read as follows:

(a)  A person may not engage in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer unless the person has applied for and received the applicable permit from the comptroller.

(b)  Each distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer.

(h)  Permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer shall be governed exclusively by the provisions of this code.

SECTION 4.  Section 155.0415, Tax Code, is amended by amending Subsection (a) and adding Subsections (c), (d), (e), (f), (g), (h), and (i) to read as follows:

(a)  Except for retail sales to consumers, tobacco products may only be sold or distributed by and between permit holders as provided by this section.

(c)  A manufacturer outside this state who is not a permitted distributor may sell tobacco products only to a permitted distributor.

(d)  A permitted distributor may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(e)  A permitted importer may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(f)  A permitted wholesaler may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(g)  A permitted retailer may sell tobacco products only to the consumer and may purchase tobacco products only from a permitted distributor or wholesaler in this state.

(h)  A permitted export warehouse may sell tobacco products only to persons authorized to sell or consume untaxed tobacco products outside the United States.

(i)  A manufacturer's representative may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

SECTION 5.  The heading to Section 155.049, Tax Code, is amended to read as follows:

Sec. 155.049.  PERMIT [~~LICENSING~~] YEAR; FEES.

SECTION 6.  Section 155.049, Tax Code, is amended by adding Subsections (c) and (g) to read as follows:

(c)  A fee is not required for an export warehouse permit.

(g)  A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

SECTION 7.  Section 155.101, Tax Code, is amended to read as follows:

Sec. 155.101.  RECORD OF PURCHASE OR RECEIPT. Each distributor, wholesaler, bonded agent, and export warehouse shall keep records at each place of business of all tobacco products purchased or received.  Each retailer shall keep records at a single commercial business location, which the retailer shall designate as its principal place of business in the state, of all tobacco products purchased and received.  These records must include the following, except that Subdivision (7) applies to distributors only and Subdivision (8) applies only to the purchase or receipt of tobacco products other than cigars:

(1)  the name and address of the shipper or carrier and the mode of transportation;

(2)  all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express receipts;

(3)  the date and the name of the place of origin of the tobacco product shipment;

(4)  the date and the name of the place of arrival of the tobacco product shipment;

(5)  a statement of the number, kind, and price paid for the tobacco products;

(6)  the name, address, permit number, and tax identification number of the seller;

(7)  the manufacturer's list price for the tobacco products;

(8)  the net weight as listed by the manufacturer for each unit; and

(9)  any other information required by rules of the comptroller.

SECTION 8.  Subchapter D, Chapter 155, Tax Code, is amended by adding Section 155.109 to read as follows:

Sec. 155.109.  EXPORT WAREHOUSE'S RECORDS. (a) Each export warehouse shall keep, at each of the warehouse's places of business in this state, records of all tobacco products received, distributed, and delivered.

(b)  The records must include:

(1)  invoices for receipts and deliveries;

(2)  orders for receipts and deliveries;

(3)  shipping records for receipts and deliveries; and

(4)  shipping records for distribution and delivery.

SECTION 9.  Sections 155.201(a) and (b), Tax Code, are amended to read as follows:

(a)  A person violates this chapter if the person:

(1)  is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, manufacturer's representative, or retailer and fails to keep records required by this chapter;

(2)  engages in the business of a bonded agent, distributor, wholesaler, manufacturer, export warehouse, importer, or retailer without a valid permit;

(3)  is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, or retailer and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report or application required by this chapter to the comptroller; or

(4)  is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter.

(b)  A person who violates this chapter [~~forfeits and~~] shall pay to the state a penalty of not more than $2,000 for each violation.

SECTION 10.  Section 155.202, Tax Code, is amended to read as follows:

Sec. 155.202.  NONPAYMENT OF TAX. A person commits an offense if the person, without the tax being paid:

(1)  receives or possesses in this state tobacco products for the purpose of making a first sale;

(2)  sells, offers for sale, or presents tobacco products as a prize or gift; or

(3)  knowingly consumes, uses, or smokes tobacco products subject to the tax imposed by this chapter [~~in an amount on which a tax of more than $50 is due~~].

SECTION 11.  Section 155.207, Tax Code, is amended to read as follows:

Sec. 155.207.  PERMITS. A person commits an offense if the person acting:

(1)  as a distributor, wholesaler, or retailer, receives or possesses tobacco products without having a valid permit;

(2)  as a distributor, wholesaler, or retailer, receives or possesses tobacco products without having a permit posted where it can be easily seen by the public;

(3)  as a distributor or wholesaler, does not deliver an invoice to the purchaser as required by Section 155.102;

(4)  as a distributor, wholesaler, or retailer, sells tobacco products without having a valid permit; or

(5)  as a bonded agent or export warehouse, stores, distributes, or delivers tobacco products on which the tax has not been paid without having a valid permit.

SECTION 12.  Section 155.209, Tax Code, is amended to read as follows:

Sec. 155.209.  TRANSPORTATION OF TOBACCO PRODUCTS. A person commits an offense if the person:

(1)  knowingly transports tobacco products subject to the tax [~~taxed~~] under this chapter without the tax being paid;

(2)  wilfully refuses to stop a motor vehicle operated to transport tobacco products after a request to stop from an authorized representative of the comptroller; or

(3)  while transporting tobacco products, refuses to permit a complete inspection of the cargo by an authorized representative of the comptroller.

SECTION 13.  The heading to Section 155.211, Tax Code, is amended to read as follows:

Sec. 155.211.  POSSESSION: TAX DUE [~~MORE THAN $50~~].

SECTION 14.  Section 155.211(a), Tax Code, is amended to read as follows:

(a)  A person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax [~~of more than $50~~] is required to be paid that has not been paid. The absence of evidence of a tax payment is prima facie evidence of nonpayment.

SECTION 15.  Sections 155.022, 155.112(b), and 155.203, Tax Code, are repealed.

SECTION 16.  The changes in law made by this Act to Sections 155.202, 155.207, 155.209, and 155.211, Tax Code, and the repeal by this Act of Section 155.203, Tax Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 17.  The changes in law made by this Act do 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 18.  This Act takes effect September 1, 2019.

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