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By:  Miller, Thierry, Zerwas, Oliverson, H.B. No. 4013

     Springer, et al.

Substitute the following for H.B. No. 4013:

By:  Murphy C.S.H.B. No. 4013

A BILL TO BE ENTITLED

AN ACT

relating to sales and use taxes on e-cigarettes and vapor products; imposing taxes; providing an administrative penalty; authorizing the imposition of a fee.

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

SECTION 1.  Subtitle E, Title 2, Tax Code, is amended by adding Chapter 164 to read as follows:

CHAPTER 164. TAX ON E-CIGARETTES AND VAPOR PRODUCTS

Sec. 164.0001.  DEFINITIONS. In this chapter:

(1)  "E-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

(2)  "Vapor product" means a consumable liquid solution or other material aerosolized or vaporized during the use of an e-cigarette, regardless of whether the liquid contains nicotine.

Sec. 164.0002.  E-CIGARETTE AND VAPOR PRODUCT SALES TAX. (a) A tax is imposed on each sale of an e-cigarette or vapor product in this state.

(b)  The tax rate is 10 percent of the sales price of an e-cigarette or vapor product sold.

(c)  A tax imposed under this section is in addition to the tax imposed under Subchapter C, Chapter 151. A tax imposed under this section does not apply to a sale unless the tax imposed under Subchapter C, Chapter 151, applies to the sale.

Sec. 164.0003.  E-CIGARETTE AND VAPOR PRODUCT USE TAX. (a) A tax is imposed on the storage, use, or other consumption in this state of an e-cigarette or vapor product purchased from a retailer for storage, use, or other consumption in this state.

(b)  The tax rate is 10 percent of the sales price of an e-cigarette or vapor product stored, used, or otherwise consumed in this state.

(c)  A tax imposed under this section is in addition to the tax imposed under Subchapter D, Chapter 151. A tax imposed under this section does not apply to the storage, use, or other consumption of an e-cigarette or vapor product unless the tax imposed under Subchapter D, Chapter 151, applies to the storage, use, or other consumption.

Sec. 164.0004.  APPLICATION OF OTHER PROVISIONS OF CODE. (a) Except as provided by this chapter:

(1)  the taxes imposed under this chapter are administered, imposed, collected, and enforced in the same manner as the taxes under Chapter 151 are administered, imposed, collected, and enforced; and

(2)  the provisions of Chapter 151 applicable to the sales tax imposed under Subchapter C, Chapter 151, and the use tax imposed under Subchapter D, Chapter 151, apply to the sales and use taxes imposed under this chapter.

(b)  A change in the law relating to the taxation of the sale or use of an e-cigarette or vapor product under Chapter 151 also applies to the sales or use tax imposed under this chapter.

Sec. 164.0005.  REPORTS. (a) A person required to file a report under Section 151.403 who is also required to collect or pay a tax under this chapter shall file with the comptroller a report stating:

(1)  for sales tax purposes, the amount of total receipts from e-cigarettes and vapor products sold by the seller during the reporting period;

(2)  for use tax purposes, the amount of total receipts from e-cigarettes and vapor products sold by the retailer during the reporting period for storage, use, or other consumption in this state;

(3)  the amount of the total sales prices of e-cigarettes and vapor products subject to the use tax that were acquired during the reporting period for storage, use, or other consumption in this state by a purchaser who did not pay the tax to a retailer;

(4)  the amount of the taxes due under this chapter for the reporting period; and

(5)  any other information required by the comptroller.

(b)  The report required by this section for a reporting period is due on the same date that the tax payment for the period is due.

Sec. 164.0006.  RECORDS. (a) A person required to file a report under Section 151.403 who is also required to collect or pay a tax under this chapter shall keep a complete record of:

(1)  all gross receipts from each sale to which this chapter applies occurring during each reporting period, along with documentation relating to those receipts;

(2)  all purchases of e-cigarettes and vapor products, including the constituent parts of e-cigarettes and vapor products, from every source during each reporting period, along with documentation relating to those purchases;

(3)  all sales and use taxes, and any money represented to be sales or use tax, collected under this chapter during each reporting period; and

(4)  any other information required by the comptroller.

(b)  A person shall keep the records required by Subsection (a) for the period required by Section 151.025(b).

Sec. 164.0007.  DISPOSITION OF PROCEEDS. The comptroller shall deposit the proceeds from taxes imposed under this chapter to the credit of the foundation school fund.

Sec. 164.0008.  DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS. (a) A person required to file a report under Section 151.403 who is also required to collect or pay a tax under this chapter is subject to disciplinary action as provided by this section if:

(1)  an agent or employee of the person commits an offense under Subchapter H, Chapter 161, Health and Safety Code; and

(2)  the person, with criminal negligence, failed to prevent the offense through adequate supervision and training of the agent or employee.

(b)  If the comptroller finds, after notice and an opportunity for a hearing, that a person described by Subsection (a) has violated Subchapter H, Chapter 161, Health and Safety Code, at a place of business for which a sales tax permit under Chapter 151 has been issued, the comptroller may suspend the permit for that place of business or administratively assess a fine as follows:

(1)  if the person has not been found to have violated Subchapter H, Chapter 161, Health and Safety Code, at that place of business during the preceding 12 months, the comptroller may require the person to pay a fine in an amount not to exceed $500;

(2)  if the person has been found to have violated Subchapter H, Chapter 161, Health and Safety Code, at that place of business once during the preceding 12 months, the comptroller may require the person to pay a fine in an amount not to exceed $750; and

(3)  if the person has been found to have violated Subchapter H, Chapter 161, Health and Safety Code, at that place of business at least twice during the preceding 12 months, the comptroller may require the person to pay a fine in an amount not to exceed $1,000 or suspend the sales tax permit for that place of business for not more than three days.

(c)  Except as provided by Section 164.0009, if the person has been found to have violated Section 161.082(b), Health and Safety Code, on four or more previous and separate occasions at the same place of business during the preceding 24 months, the comptroller shall revoke the sales tax permit for that place of business.

(d)  A person whose sales tax permit has been revoked under this section may not apply for a sales tax permit under Chapter 151 for the same place of business before the expiration of six months after the effective date of the revocation.

Sec. 164.0009.  ACTIONS OF EMPLOYEE. (a) For purposes of Subchapter H, Chapter 161, Health and Safety Code, relating to the sale or delivery of e-cigarettes to a minor, the comptroller may suspend a sales tax permit of a person required to file a report under Section 151.403 who is also required to collect or pay a tax under this chapter but may not revoke the permit under Section 164.0008 if the comptroller finds that:

(1)  the person has not violated Section 161.082(b), Health and Safety Code, more than four times at the place of business for which the permit is issued in the 24-month period preceding the violation in question;

(2)  the person requires its employees to attend a comptroller-approved seller training program;

(3)  the employee has actually attended a comptroller-approved seller training program; and

(4)  the person has not directly or indirectly encouraged the employee to violate the law.

(b)  The comptroller shall adopt rules or policies establishing the minimum requirements for approved seller training programs. On application, the comptroller shall approve seller training programs meeting the requirements that are sponsored privately or by public community colleges. The comptroller may charge an application fee in an amount necessary to defray the expense of processing the application.

(c)  The comptroller may approve under this section a seller training program sponsored by a person described by Subsection (a) for the purpose of training the person's employees without regard to whether the employees are located at the same place of business. This subsection applies only to a person who employs at least 100 persons at any one time during the permit year who sell e-cigarettes.

SECTION 2.  This Act takes effect September 1, 2019.