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H.B. No. 4013

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)

1 A tax is imposed on the storage, use, or other consumption in this
2 state of an e-cigarette or vapor product purchased from a retailer
3 for storage, use, or other consumption in this state.

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

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

13 Sec. 164.0004. APPLICATION OF OTHER PROVISIONS OF CODE.

14 (a) Except as provided by this chapter:

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

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

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

26 Sec. 164.0005. REPORTS. (a) A person required to file a
27 report under Section 151.403 who is also required to collect or pay

1 a tax under this chapter shall file with the comptroller a report
2 stating:

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

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

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

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

17 (5) any other information required by the comptroller.

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

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

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

27 (2) all purchases of e-cigarettes and vapor products,

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

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

7 (4) any other information required by the comptroller.

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

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

13 Sec. 164.0008. DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS.

14 (a) A person required to file a report under Section 151.403 who is
15 also required to collect or pay a tax under this chapter is subject
16 to disciplinary action as provided by this section if:

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

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

23 (b) If the comptroller finds, after notice and an
24 opportunity for a hearing, that a person described by Subsection
25 (a) has violated Subchapter H, Chapter 161, Health and Safety Code,
26 at a place of business for which a sales tax permit under Chapter
27 151 has been issued, the comptroller may suspend the permit for that

1 place of business or administratively assess a fine as follows:

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

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

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

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

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

26 Sec. 164.0009. ACTIONS OF EMPLOYEE. (a) For purposes of
27 Subchapter H, Chapter 161, Health and Safety Code, relating to the

1 sale or delivery of e-cigarettes to a minor, the comptroller may
2 suspend a sales tax permit of a person required to file a report
3 under Section 151.403 who is also required to collect or pay a tax
4 under this chapter but may not revoke the permit under Section
5 164.0008 if the comptroller finds that:

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

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

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

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

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

23 (c) The comptroller may approve under this section a seller
24 training program sponsored by a person described by Subsection (a)
25 for the purpose of training the person's employees without regard
26 to whether the employees are located at the same place of business.
27 This subsection applies only to a person who employs at least 100

1 persons at any one time during the permit year who sell
2 e-cigarettes.

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