

By: Miller

H.B. No. 4013

A BILL TO BE ENTITLED

AN ACT

relating to sales and use taxes on e-cigarette vapor products;
imposing taxes; providing an administrative penalty.

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-CIGARETTE 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 nicotine liquid
solution or other material containing nicotine suitable for use in
an e-cigarette.

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

(b) The tax rate is five cents for each milliliter or
fractional part of a milliliter of vapor product sold.

(c) The tax imposed under this section is in addition to the
tax imposed under Subchapter C, Chapter 151. The 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 VAPOR PRODUCT USE TAX. (a) A
tax is imposed on the storage, use, or other consumption in this
state of a vapor product purchased from a retailer for storage, use,

1 or other consumption in this state.

2 (b) The tax rate is five cents for each milliliter or
3 fractional part of a milliliter of vapor product stored, used, or
4 otherwise consumed in this state.

5 (c) The tax imposed under this section is in addition to the
6 tax imposed under Subchapter D, Chapter 151. The tax imposed under
7 this section does not apply to the storage, use, or other
8 consumption of a vapor product unless the tax imposed under
9 Subchapter D, Chapter 151, applies to the storage, use, or other
10 consumption.

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

12 (a) Except as provided by this chapter:

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

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

21 (b) A change in the law relating to the taxation of the sale
22 or use of a vapor product under Chapter 151 also applies to the
23 sales or use tax imposed under this chapter.

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

1 (1) for sales tax purposes, the volume of vapor
2 products sold by the seller during the reporting period;

3 (2) for use tax purposes, the volume of vapor products
4 sold by the retailer during the reporting period for storage, use,
5 or other consumption in this state;

6 (3) the volume of vapor products subject to the use tax
7 that were acquired during the reporting period for storage, use, or
8 other consumption in this state by a purchaser who did not pay the
9 tax to a retailer;

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

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

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

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

19 (1) the volume of vapor products sold in this state
20 during each reporting period;

21 (2) the volume of vapor products, including the
22 constituent parts of vapor products, purchased from every source
23 during each reporting period;

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

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

27 Sec. 164.0007. DISPOSITION OF PROCEEDS. The comptroller

1 shall deposit the proceeds from taxes imposed under this chapter to
2 the credit of the general revenue fund.

3 Sec. 164.0008. DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS.

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

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

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

13 (b) If the comptroller finds, after notice and an
14 opportunity for a hearing, that a person described by Subsection
15 (a) has violated Subchapter H, Chapter 161, Health and Safety Code,
16 at a place of business for which a sales tax permit under Chapter
17 151 has been issued, the comptroller may suspend the permit for that
18 place of business or administratively assess a fine as follows:

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

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

27 (3) if the person has been found to have violated

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

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

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

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

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

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

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

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

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

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

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