TENTH DAY

(Friday, July 10, 1959)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following senators were present:

Aikin	Martin
Baker	Moffett
Bradshaw	Moore
Colson	Owen
Crump	Parkhouse
Dies	Phillips
Fly	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis
Krueger	Wood
Lane	

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation as follows:

"O God, our Father, in the holy hush of this moment, may Thy unseen presence be felt in our every heart; and may we be transformed by the renewing of our minds, that we may prove what is that good, and acceptable, and perfect will of Thine. We pray in Christ's name. Amen."

On motion of Senator Aikin, and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Report of Standing Committee

Senator Bradshaw submitted the following report:

Austin, Texas,
July 9, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Insurance, to whom was referred S. B. No. 37, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

BRADSHAW, Chairman.

Senate Bill 37 Ordered Not Printed

On motion of Senator Bradshaw and by unanimous consent S. B. No. 37 was ordered not printed.

Senate Bills on First Reading

By unanimous consent the following bills were introduced, read first time and referred to the committee indicated:

By Senator Moffett:

S. B. No. 42, A bill to be entitled "An Act providing for the creation of a county Probation Department in and for Wichita County, Texas; providing for the appointment of a Chief Probation Officer and such assistants as are determined to be necessary, by the Wichita County Juvenile Board, and providing for the fixing of salaries of all personnel of the Wichita County Probation Department by the Wichita County Juvenile Board; providing for the term of appointments of the Chief Probation Officer and his assistants; providing for the certification of expenses incurred by all Wichita County Probation Officers, by the Juvenile Board; providing for the annual raising of funds for operation of the Wichita County Probation Department by Wichita County Commissioners Court in accordance with authority conferred by Article 5142d, Vernon's Annotated Civil Statutes; providing for surety fidelity bond by probation officers and other personnel; providing for operation, supervision, and control of farms, homes, schools, institutions, and other facilities used in the training, education, detention, support or correction of juveniles; providing foster home care for juveniles; providing for acceptance of any grant or devise of land or gift or bequest or donation for juvenile program; providing for assessment of court costs in divorce cases for maintenance of child support office and the administration of such funds collected by the Wichita County Juvenile Board; providing for the assessment of court costs for adoption investigation services and the administration of such funds collected by the Wichita County Juvenile Board; providing for investigation of cases involving custody of children; providing for the preparation of records of cases handled by the Probation Department; repealing conflicting laws; and declaring an imperative public necessity for suspension of the Constitutional Rule requiring bills to be read on three sev-

eral days in each House; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Herring:

S. B. No. 43, A bill to be entitled "An Act providing for the appointment of the personnel to serve as Texas State Property Guards by the State Board of Control; providing for the duties and powers of the Texas State Property Guards; providing for the issuance of commissions as law enforcement officers to personnel designated as Texas State Property Guards; defining their powers; providing that monies appropriated to the State Board of Control by the provisions of House Bill 133, Acts 55th Legislature, Regular Session, 1957, Chapter 385 may be expended for the purpose of paying salaries, payment of bond premiums and other expenses necessary to carry out the provisions of this Act; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Herring:

S. B. No. 44, A bill to be entitled "An Act amending Article 36 of Vernon's Code of Criminal Procedure to include in the category of peace officers Texas State Property Guards; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senators Parkhouse and Willis:

S. B. No. 45, A bill to be entitled "An Act amending Chapter 518, Acts of the Regular Session of the 54th Legislature (Vernon's Texas Civil Statutes Article 8280-188) to facilitate the issuance of revenue bonds by Trinity River Authority of Texas, enacting other provisions related to the subject, and declaring an emergency."

To the Committee on Water and Conservation.

By Senator Willis:

S. B. No. 46, A bill to be entitled "An Act amending Section 37 of Chapter 25, Acts of the 39th Legislature, Regular Session, 1925, as amended by Section 6 of Chapter 107, Acts of the 40th Legislature, 1st Called Session, 1927, so as to provide an option in the number and method of election of directors of water control and improvement districts; and declaring an emergency."

To the Committee on Water and Conservation.

Senate Resolution 61

Senator Roberts offered the following resolution:

Whereas, We are honored today to have as a visitor in the Senate the Honorable Tellie F. Aston, former mayor of Sherman, Texas, and former Sovereign Grand Master of the Odd Fellows of the World; and

Whereas, We desire to welcome this distinguished visitor to the Capitol Building and Capital City; now, therefore, be it

Resolved, That his presence be recognized by the Senate of Texas and that he be extended the official welcome of the Senate and extended the privileges of the floor for the day.

The resolution was read and was adopted.

Senator Roberts by unanimous consent presented Mr. Aston to the Members of the Senate.

Reports of Standing Committee

Senator Hardeman submitted the following reports:

Austin, Texas,
July 9, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 38, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HARDEMAN, Chairman.

Austin, Texas,
July 9, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 48, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HARDEMAN, Chairman.

Senate Concurrent Resolution 7

Senator Martin offered the following resolution:

S. C. R. No. 7, Granting the heirs of J. P. Orr permission to sue the State of Texas.

Whereas, On October 20, 1954, Watt Orr, a resident of Hill County, Texas, as Trustee for the J. P. Orr Estate, conveyed to the State of Texas the following described right-of-way property, located on each side of the existing U. S. Highway No. 81:

Being a part of the Henry Ross Survey, Abstract No. 755 in Hill County, Texas, said land being comprised of 4.381 acres on the west side of existing U. S. Highway 81, and 3.172 acres on the east side of said highway, and being more particularly described in Warranty Deed from said Watt Orr as Trustee for the J. P. Orr Estate to the State of Texas, dated October 20, 1954, and recorded in Volume 395, page 601 of the Deed Records of Hill County, Texas; and

Whereas, On the same date, acting in the same capacity, Watt Orr, Trustee, granted to the Texas Highway Department and the State of Texas an easement for .917 acres of land for drainage purposes, said easement being recorded in Volume 396, page 384 of the Deed Records of Hill County, Texas; and

Whereas, As payment for the above described land, Watt Orr, Trustee, received a total consideration of Twenty-two Hundred ($2,200.00) Dollars; and

Whereas, At the time of the purchase of the property aforesaid, Watt Orr was promised by officials of the Texas Highway Department and by others that he would be given a crossing under the highway to be widened and for which purpose the land was purchased, since the highway would cut the seller's farm approximately in half; and

Whereas, Watt Orr was shown blueprints of the road to be constructed, which blueprints clearly had the crossing indicated thereon and it was not until after the widening of the highway was completed that he discovered and learned that the plans had been changed and no crossing had been given him; and

Whereas, As a result of this failure on the part of the Texas Highway Department to keep its agreement with the seller of the property, Watt Orr must travel approximately four miles in order to reach the portion of his farm lying on the opposite side of the highway, causing great inconvenience and expense to him; Now, therefore, be it

Resolved, by the Senate of the State of Texas, the House of Representatives concurring, That the heirs of J. P. Orr, deceased, be, and they are hereby granted permission to bring suit against the State of Texas and the Texas Highway Commission in a court of competent jurisdiction in Hill County, Texas, to determine the liability, if any, of the State of Texas and the Texas Highway Commission to the heirs of J. P. Orr, deceased, growing out of the incident above described, and the said heirs of J. P. Orr, deceased, are further granted permission to make the State of Texas and the Texas Highway Commission third parties, if they so desire, in a suit against Hill County, Texas, to determine who is liable for the damages, if any; and be it further

Resolved, That since the heirs of J. P. Orr, deceased, have heretofore not had permission to sue the State of Texas and the Texas Highway Commission, that limitations shall begin to run from the date of this Resolution and not from the date of the incident cited above, and that in such suit or suits as stated above, service of citation shall be had upon the Attorney General of the State of Texas; and be it further

Resolved, That this Resolution shall not be construed as an admission of liability on the part of the State of Texas or the State Highway Department, and all essential facts as to the wrongful taking of the property and damages, if any, shall be proved as in other similar cases, and either party may appeal from judgment as in similar cases.

The resolution was read and was referred to the committee on Jurisprudence.

House Bill 48 Ordered Not Printed

On motion of Senator Parkhouse and by unanimous consent H. B. No. 48 was ordered not printed.

Senate Concurrent Resolution 8

Senator Phillips offered the following resolution:

S. C. R. No. 8, Suspending Joint Rules to permit consideration of S. B. No. 9 at any time.

Be it resolved by the Senate of the

State of Texas, the House of Representatives concurring, that the joint rules be suspended so as to allow either House to take up Senate Bill 9 at any time.

BAKER
PHILLIPS

The resolution was read.

On motion of Senator Phillips and by unanimous consent the resolution was considered immediately and was adopted.

Report of Standing Committee

Senator Aikin by unanimous consent submitted the following report:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred S. B. No. 42, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Message from the Acting Governor

The following message received from Acting Governor Andy Rogers on yesterday was read and was filed with the Secretary of the Senate:

Austin, Texas,
July 9, 1959.

To the Members of the Fifty-sixth Legislature, Second Called Session:

This is to express my sincere thanks for the cooperation the Members of the Legislature have given me during my brief administration as Governor.

As I return to my Senate seat tomorrow, I will treasure the memory of this day, especially the friendship of my fellow Members of the Legislature.

Respectfully submitted,
ANDY ROGERS
Acting Governor.

Senate Resolution 62

Senator Baker offered the following resolution:

Whereas, We are honored today to have as visitors in the Senate, Mr. W. P. Noser and his son, John; and

Whereas, We desire to welcome these distinguished visitors to the Capitol Building and Capital City; Now, therefore, be it

Resolved, That their presence be recognized by the Senate of Texas and that they be extended the official welcome of the Senate.

The resolution was read and was adopted.

Senator Baker by unanimous consent presented Mr. Noser to the Members of the Senate.

Reports of Standing Committees

Senator Lane by unanimous consent submitted the following report:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Jurisprudence, to whom was referred S. C. R. No. 7, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Senate Concurrent Resolution 7 Ordered Not Printed

On motion of Senator Martin and by unanimous consent S. C. R. No. 7 was ordered not printed.

Reports of Standing Committee

Senator Aikin by unanimous consent submitted the following reports:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred S. B. No. 43, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred S. B. No. 44, have had the same under consideration, and we are instructed to report it back to the

Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Senate Bills 43 and 44 Ordered Not Printed

On motion of Senator Herring and by unanimous consent S. B. Nos. 43 and 44 were ordered not printed.

Reports of Standing Committee

Senator Weinert by unanimous consent submitted the following reports:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation to whom was referred S. B. No. 45, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

WEINERT, Chairman.

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred S. B. No. 46, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

WEINERT, Chairman.

Senate Bill 42 Ordered Not Printed

On motion of Senator Moffett and by unanimous consent S. B. No. 42 was ordered not printed.

Senate Bill 45 Ordered Not Printed

On motion of Senator Parkhouse and by unanimous consent S. B. No. 45 was ordered not printed.

Bills Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled bills:

S. B. No. 5, A bill to be entitled "An Act to amend H. B. No. 155, Chapter 49 of the First Called Session of the 53rd Legislature to provide for the exchange of benches in the three County Criminal Courts of Dallas County, Texas; and declaring an emergency."

S. B. No. 15, A bill to be entitled "An Act amending Section 1 of Chapter 283, Acts of the 51st Legislature, Regular Session, 1949, so as to provide that the Juvenile Board in any county having a population of Eight Hundred and Six Thousand (806,000) or more according to the last preceding Federal Census, may designate one or more District Courts or Courts of Domestic Relations or the County Court or any combination thereof as Juvenile Courts of such county; and declaring an emergency."

S. B. No. 18, A bill to be entitled "An Act validating the disannexation or discontinuance of territory of all cities and towns of five thousand (5,000) inhabitants or less, heretofore disannexed or discontinued or attempted to be disannexed or discontinued and validating ordinances and other municipal or governmental proceedings relating thereto; validating ordinances and proceedings revoking previous ordinances and proceedings of annexation; providing that this Act shall not apply to any city or town now involved in litigation questioning the legality of the disannexation or discontinuance of territory; and declaring an emergency."

S. B. No. 19, A bill to be entitled "An Act to diminish the civil jurisdiction of the County Courts of the Counties of Sabine and San Augustine, Texas, and conform the jurisdiction of the First Judicial District Court to such change; etc., and declaring an emergency."

S. B. No. 21, A bill to be entitled "An Act authorizing the Board of Directors of any water improvement district, water control and improvement district or irrigation district, in its discretion, to contract in writing in advance to waive any immunity of such district from liability for torts or negligence of agents of such district in certain cases and circumstances; and declaring an emergency."

S. B. No. 22, A bill to be entitled "An Act amending sub-sections (c), (d), (e), (h), and (i) of Article 908, of the Penal Code of Texas, 1925, as amended, relating to hunting on game preserves for pay; and declaring an emergency."

S. B. No. 27, A bill to be entitled

"An Act authorizing the deposit to local funds of the Texas Agricultural Experiment Station to the credit of Substation No. 2, Smith County, to be expended for the restoration, operation and improvement of said Substation No. 2, the monetary consideration received by the Board of Directors of the Agricultural and Mechanical College of Texas for the transfer to the State Highway Commission, the use of, and jurisdiction over, 39.09 acres of land, transferred pursuant to authority of Chapter 300, Acts 55th Legislature, Regular Session, 1957."

Senate Bill 46 Ordered Not Printed

On motion of Senator Willis and by unanimous consent S. B. No. 46 was ordered not printed.

Senate Bill 37 on Second Reading

On motion of Senator Bradshaw and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S. B. No. 37, A bill to be entitled "An Act amending Articles 1.02, 1.03, Section (b), (d), and (e) of Article 1.04, Articles 1.05, 1.06 and 1.09 of the Insurance Code, same being Acts of the 52nd Legislature, Regular Session (1951), Chapter 491, page 868, as last amended by Acts of the 55th Legislature, Regular Session (1957), Chapter 499, page 1454; repealing all laws and parts of laws in conflict with the provisions of this act to the extent of such conflict only; providing for a severability and savings clause as to any invalid provisions of this act, and declaring an emergency."

The bill was read second time and passed to engrossment.

Record of Vote

Senators Gonzalez and Parkhouse asked to be recorded as voting "Nay" on the passage of S. B. No. 37 to engrossment.

Senate Bill 37 on Third Reading

Senator Bradshaw moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 37 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—26

Aikin	Martin
Baker	Moffett
Bradshaw	Owen
Colson	Phillips
Crump	Ratliff
Dies	Reagan
Fly	Roberts
Fuller	Rogers
Hardeman	Secrest
Hazlewood	Smith
Herring	Weinert
Kazen	Willis
Lane	Wood

Nays—4

Gonzalez	Krueger
Hudson	Parkhouse

Absent

Moore

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—27

Aikin	Martin
Baker	Moffett
Bradshaw	Moore
Colson	Owen
Crump	Phillips
Dies	Reagan
Fly	Roberts
Fuller	Rogers
Hardeman	Secrest
Hazlewood	Smith
Herring	Weinert
Hudson	Willis
Kazen	Wood
Lane	

Nays—4

Gonzalez	Parkhouse
Krueger	Ratliff

Senate Bill 32 Re-referred

On motion of Senator Herring and by unanimous consent S. B. No. 32 was withdrawn from the Committee on State Affairs and re-referred to the Committee on State Departments and Institutions.

Report of Standing Committee

Senator Crump by unanimous consent submitted the following report:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Departments and Institutions, to whom was referred S. B. No. 32, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

CRUMP, Chairman.

Senate Bill 32 Ordered Not Printed

On motion of Senator Herring and by unanimous consent S. B. No. 32 was ordered not printed.

Senate Bills on First Reading

By unanimous consent the following bills were introduced, read first time and referred to the committee indicated:

By Senator Crump:

S. B. No. 47, A bill to be entitled "An Act to amend Section 1, Chapter 43, Acts 1931, 42nd Legislature, Regular Session, page 65, now known and identified as Article 10a of the Code of Criminal Procedure of the State of Texas, and Article 12 of the Code of Criminal Procedure of Texas, 1925, as amended by Acts 1931, 42nd Legislature, Regular Session, page 65, Chapter 43, Sec. 3, to provide that the defendant in a criminal prosecution for any non-capital felony offense, shall have the right upon entering a plea of guilty or upon entering a plea of nolo contendere, to waive the right of trial by a jury, and declaring an emergency."

To the Committee on Counties, Cities and Towns.

By Senator Crump:

S. B. No. 48, A bill to be entitled "An Act declaring an open season on collared peccary or javelina in Kerr County, Texas; making it unlawful to possess collared pecarry or javelina for the purpose of barter or sale, or to sell same; providing penalties for violations; and declaring an emergency."

To the Committee on Game and Fish.

Senate Bill 45 on Second Reading

Senator Parkhouse moved that Senate Rules 13, 32 and 38 and The Constitutional Rule requiring bills to be read on three several days be suspended and that S. B. No. 45 be placed on its second reading and passage to engrossment and on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—30

Aikin	Lane
Baker	Moffett
Bradshaw	Moore
Colson	Owen
Crump	Parkhouse
Dies	Phillips
Fly	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis
Krueger	Wood

Nays—1

Martin

The President then laid before the Senate on its second reading and passage to engrossment the following bill:

S. B. No. 45, A Bill to be Entitled "An Act amending Chapter 518, Acts of the Regular Session of the 54th Legislature (Vernon's Texas Civil Statutes, Articles 8280-188) to facilitate the issuance of Revenue Bonds by Trinity River Authority of Texas, enacting other provisions related to the subject, and declaring an emergency."

The bill was read the second time and was passed to engrossment.

(Senator Martin in Chair.)

Senate Bill 45 on Third Reading

The Constitutional Rule requiring bills to be read on three several days having been suspended the Presiding Officer laid S. B. No. 45 before the Senate on its third reading and final passage.

The bill was read the third time and was passed.

Record of Vote

Senator Martin asked to be recorded as voting "Nay" on the final passage of S. B. No. 45.

Co-Author of Senate Bill 45

Senator Willis asked unanimous consent to be shown as Co-author of S. B. No. 45.

There was no objection offered.

House Bill 38 Ordered Not Printed

On motion of Senator Baker and by unanimous consent H. B. No. 38 was ordered not printed.

Report of Standing Committee

Senator Aikin by unanimous consent submitted the following report:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your committee on Counties, Cities and Towns, to whom was referred S. B. No. 47, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Senate Bill 46 on Second Reading

Senator Willis moved that Senate Rules 13, 32 and 38 and The Constitutional Rule requiring bills to be read on three several days be suspended and that S. B. No. 46 be placed on its second reading and passage to engrossment and on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—29

Aikin	Martin
Baker	Moffett
Bradshaw	Moore
Colson	Owen
Crump	Parkhouse
Dies	Phillips
Fly	Ratliff
Fuller	Reagan
Hardeman	Roberts
Hazlewood	Rogers
Herring	Secrest
Hudson	Weinert
Kazen	Willis
Krueger	Wood
Lane	

Present—Not Voting

Gonzalez

Absent

Smith

The presiding officer then laid before the Senate on its second reading and passage to engrossment the following bill:

S. B. No. 46, A bill to be Entitled "An Act Amending Section 37, Chapter 25, Acts of the 39th Legislature, Regular Session of 1925, as amended by Section 6 of Chapter 107, Acts of the 40th Legislature, 1st Called Session, 1927, so as to provide an option in the number and method of election of directors of Water Control and Improvement Districts; and declaring an emergency.

The bill was read the second time and was passed to engrossment.

Senate Bill 46 on Third Reading

The Constitutional Rule requiring bills to be read on three several days having been suspended the Presiding Officer laid S. B. No. 46 before the Senate on its third reading and final passage.

The bill was read third time and was passed.

Senate Concurrent Resolution 7 on Second Reading

On motion of Senator Moffett and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S. C. R. No. 7, Granting the heirs of J. P. Orr permission to sue the State of Texas.

The resolution was read and was adopted.

Senate Bill 43 on Second Reading

Senator Herring moved that Senate Rules 13, 32 and 38 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S. B. No. 43 be placed on its second reading and passage to engrossment and on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—30

Aikin	Fly
Baker	Fuller
Bradshaw	Gonzalez
Colson	Hardeman
Crump	Hazlewood
Dies	Herring

Hudson	Phillips
Kazen	Ratliff
Krueger	Roberts
Lane	Rogers
Martin	Secrest
Moffett	Smith
Moore	Weinert
Owen	Willis
Parkhouse	Wood

Absent

Reagan

The Presiding Officer then laid before the Senate on its second reading and passage to engrossment the following bill:

S. B. No. 43, A bill to be entitled "An Act providing for the appointment of the personnel to serve as Texas State Property Guards by the State Board of Control; etc., and declaring an emergency."

The bill was read the second time.

Senator Roberts offered the following amendment to the bill:

Amend S. B. No. 43:

Delete the words "Texas State Property Guards" wherever they appear and substitute the words "Texas Capitol Guards."

The amendment was adopted.

On motion of Senator Herring and by unanimous consent the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

Senate Bill 43 on Third Reading

The Constitutional Rule requiring bills to be read on three several days having been suspended the Presiding Officer laid S. B. No. 43 before the Senate on its third reading and final passage.

The bill was read the third time and was passed.

House Bill 38 on Second Reading

On motion of Senator Baker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H. B. No. 38, An Act amending Article 494a, Vernon's Code of Criminal Procedure, increasing attorney fees for representation of indigents accused of felony offenses; providing that attorney fees may be paid; providing for fees on pleas of guilty; repealing all laws or parts of laws in conflict herewith; expressly repealing Section 1A of Chapter 10, page 25, Acts of the Fifty-second Legislature known as Section 1A of Article 494a, Vernon's Code of Criminal Procedure; and declaring an emergency.

The bill was read second time and passed to third reading.

Record of Vote

Senator Martin asked to be recorded as voting "Nay" on the passage of H. B. No. 38 to third reading.

House Bill 38 on Third Reading

Senator Baker moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that H. B. No. 38 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—29

Aikin	Lane
Baker	Moore
Bradshaw	Owen
Colson	Parkhouse
Crump	Phillips
Dies	Ratliff
Fly	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hardeman	Secrest
Hazlewood	Smith
Herring	Weinert
Hudson	Willis
Kazen	Wood
Krueger	

Nays—2

Martin	Moffett

The Presiding Officer then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

Record of Vote

Senators Martin and Moffett asked to be recorded as voting "Nay" on the final passage of H. B. No. 38.

Bills Signed

The Presiding Officer announced the signing by the President in the

presence of the Senate after the caption had been read, the following enrolled bills:

H. B. No. 29, An Act to authorize and direct the Game and Fish Commission to negotiate and make reciprocal agreements to allow sport and commercial fishermen to fish and sportsmen to hunt migratory water fowl on lakes and rivers located upon a common boundary with another state, allowing reciprocal agreements on license with other states and repealing all laws in conflict; granting the Commission power to issue proclamations, rules and regulations to carry out such agreements; providing a penalty; and declaring an emergency.

H. B. No. 40, Authorizing the Board of Water Engineers to grant water permits in certain counties for between two hundred (200) acre-feet and eight hundred (800) acre-feet for a term of years not to exceed twenty (20) years; amending Chapter 1 of Title 128 of the Revised Civil Statutes of Texas, 1925, by adding thereto a new Article to be known as Article 7515b; providing that this Act be cumulative of other laws; and declaring an emergency.

H. B. No. 41, A bill to be entitled An Act granting certain common and common consolidated school districts power to levy taxes; etc., and declaring an emergency.

H. B. No. 56, Relating to the taking, or catching of catfish from the waters of the Trinity River in Chambers County, Texas, excluding the waters of Trinity Bay; repealing conflicting laws; and declaring an emergency.

H. B. No. 59, Amending Section 8 of Chapter 427, Acts of the Fifty-fourth Legislature, Regular Session, 1955, so as to fix the minimum and maximum salaries of certain officials in Dallas County, Texas; and declaring an emergency.

Message from the House

Hall of the House of Representatives
Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. C. R. No. 8, Be it resolved by the Senate of the State of Texas, the House of Representatives concurring, that the joint rules be suspended so as to allow either House to take up Senate Bill 9 at any time.

Respectfully submitted,
DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Senate Bill 44 on Second Reading

Senator Herring moved that Senate Rules 13, 32 and 38 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S. B. No. 44 be placed on its second reading and passage to engrossment and on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—31

Aikin	Martin
Baker	Moffett
Bradshaw	Moore
Colson	Owen
Crump	Parkhouse
Dies	Phillips
Fly	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Kazen	Willis
Krueger	Wood
Lane	

The Presiding Officer then laid before the Senate on its second reading and passage to engrossment the following bill:

S. B. No. 44, A bill to be entitled "An Act amending Article 36 of Vernon's Code of Criminal Procedure to include in the category of peace officers Texas State Property Guards; and declaring an emergency."

The bill was read the second time.

Senator Herring offered the following amendment to the bill:

Amend S. B. No. 44 by deleting Section 1 and substituting in lieu thereof the following:

"Section 1. That Title 1, Chapter 2, Art. 36 of the Texas Code of Criminal Procedure be amended to read as follows:"

The amendment was adopted.

Senator Roberts offered the following amendment to the bill:

Amend S. B. 44 by deleting the words "Texas State Property Guards" wherever they appear and susbstituting "Texas Capitol Guards."

The amendment was adopted.

On motion of Senator Herring and by unanimous consent the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

Senate Bill 44 on Third Reading

The Constitutional Rule requiring bills to be read on three several days having been suspended the Presiding Officer laid S. B. No. 44 before the Senate on its third reading and final passage.

The bill was read the third time and was passed.

Recess

On motion of Senator Hardeman the Senate at 11:49 o'clock a.m. took recess until 3:00 o'clock p.m. today.

After Recess

The President called the Senate to order at 3:00 o'clock p.m. today.

Message from the House

Hall of the House of Representatives
Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 14, Be it resolved by the House of Representatives, the Senate concurring, that the Joint Rules be, and they are hereby suspended, so that either House may take up and consider Senate Bill No. 10 at any time.

H. C. R. No. 17, Suspending Joint Rules to allow either House to take up House Bill No. 50 at any time.

S. C. R. No. 5, Granting National Car Rentals of Corpus Christi, Inc., permission to sue the State.

S. B. No. 9, An Act affirming and protecting the right of the public to use certain state-owned beaches bordering on the seaward shore of the Gulf of Mexico; providing for severability; and declaring an emergency.

(With Amendments.)

H. B. No. 36, An Act relating to entering of enclosed lands of another without consent, and hunting, fishing, camping, encroaching or damaging thereon and relating to entering lands that surround other land either wholly or partially without consent and hunting, fishing, camping, encroaching or damaging thereon; providing for proof of ownership; fixing a penalty; making certain provisions relative to prosecution under the Act; repealing Article 1377, Revised Penal Code of 1925; as amended; exempting lands leased or owned by the Federal Government; making other provisions relative thereto; providing a severability clause; and declaring an emergency.

Respectfully submitted,
DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Conference Committee Report on House Bill 18

Senator Lane submitted the following Conference Committee Report on H. B. No. 18:

Austin, Texas,
July 9, 1959.

Honorable Ben Ramsey, President of the Senate.

Honorable Waggoner Carr, Speaker of the House of Representatives.

Sirs: We, your Conference Committee appointed to adjust the differences between the House and Senate on H. B. No. 18, have met and beg leave to recommend that H. B. No. 18 be passed in the form attached hereto.

Respectfully submitted,
WEINERT
REAGAN
LANE
PHILLIPS
HARDEMAN
On the part of the Senate
MURRAY
SEELIGSON
WINFREE
ALLEN
ROBERTS
On the part of the House

CONFERENCE COMMITTEE REPORT ON H. B. 18
FACT SHEET

Contents and Additional Revenue Estimates

Subject and Location		Biennial Yield
Sec. 1, Ch. 1	General Provisions	$
Sec. 1, Ch. 2	Poll Tax	Recod.
Sec. 1, Ch. 3	Natural Gas Production—1% increase	12,200,000
Sec. 1, Ch. 4	Oil Production	Recod.
Sec. 1, Ch. 5	Sulphur Production	Recod.
Sec. 1, Ch. 6	Motor Vehicle Sales	
	Rate increased to 1.6%	20,400,000
Sec. 1, Ch. 7	Cigarettes	
	Rate increased to 8¢ per pack; 1¢ permanent—2¢ temporary	64,458,000
Sec. 1, Ch. 8	Tobacco Products	
	Most class rates reduced from H. B. 18, snuff exempt	13,500,000
Sec. 1, Ch. 9	Motor Fuel—Gasoline	Recod.
Sec. 1, Ch. 10	Special Fuels—Better enforcement	300,000
Sec. 1, Ch. 11	Utilities	
	Rate increased 20%—telephone and telegraph omitted	3,100,000
Sec. 1, Ch. 12	Corporation Franchise Tax	
	Rate increase—75¢ temporary and 50¢ for biennium; same formula	32,500,000
Sec. 1, Ch. 13	Coin Devices	Recod.
Sec. 1, Ch. 14	Inheritance	Recod.
Sec. 1, Ch. 15	Additional Inheritance	Recod.
Sec. 1, Ch. 16	Stock Transfer	Recod.
Sec. 1, Ch. 17	Chain Store	Recod.
Sec. 1, Ch. 18	Cement Production	Recod.
Sec. 1, Ch. 19	Miscellaneous Occupation	Recod.
Sec. 1, Ch. 20	Miscellaneous Excise Tax	
	Boats and Boat Motors—1.6% retail	3,000,000
	Air Conditioners—3% retail	7,575,000
	Cameras, Lenses and Film—5% retail—temporary	3,000,000
	Radios, TV, Phonographs and Component Parts—2.2% retail	6,000,000
	Cosmetics and Playing Cards	Recod.
Sec. 1, Ch. 21	Private Clubs	
	Rates—commercials—10% and non-profits—2%	7,000,000
Sec. 1, Ch. 22	Admissions	
	Recodified and theater rates reduced	—90,000
Sec. 1, Ch. 23	Allocations for Section 1	
Sec. 2	Distilled Spirits and Wine—	
	Liquor increased to $1.68 per gallon and wine increased 20% per gallon	6,028,000
Sec. 3	Administration of Act	
Sec. 4	Savings Clause	
Sec. 5	Severability Clause	
Sec. 6	Appropriation	
Sec. 7	Repealer: Includes necessary recodification repealers, also prizes and awards, collection agencies, motor carriers, textbooks and minor occupation taxes	—604,000
Sec. 8	Effective Date	
Sec. 9	Emergency Clause	
	BILL TOTAL	$178,367,000

Subject and Location	Biennial Yield
From Comptroller's improved administration and collections	$ 4,000,000
TOTAL ESTIMATED REVENUE	$182,367,000

H. B. No. 18,

A BILL

To Be Entitled

An Act revising and rearranging certain statutes of Title 122 "Taxation" of the Revised Civil Statutes of Texas and certain other laws of this State relating to taxation into a new Title to be known as Title 122A "Taxation-General" of the Revised Civil Statutes of Texas; revising Statutes levying the poll tax, natural gas production tax, oil production tax, sulphur production tax, motor vehicle sales tax, cigarette tax, motor fuel (gasoline) tax, special fuels tax, utilities tax, corporation franchise tax, coin-operated machines tax, inheritance tax, additional inheritance tax, stock transfer tax, Chain Store Tax, Cement Production Tax, Admissions Tax, miscellaneous occupation taxes, and miscellaneous excise taxes; increasing or otherwise changing the rates of the natural gas production tax, the motor vehicle sales tax, the cigarette tax (both permanent and temporary), the utility companies tax (excepting telephone and telegraph companies) and the corporation franchise tax; reducing rate of the theater Admissions Tax; levying certain new and additional taxes for the support of the state government including Tobacco Products Tax, excise taxes on boats and boat motors, air conditioners, cameras, camera lenses, film, film projectors, and photographic apparatus, phonographs and component parts, and a tax on private clubs; providing procedures for the administration and enforcement of such taxes and penalties for violations thereof; providing for the use of certain funds for tax administration and enforcement purposes; providing for the allocation of funds under this Title; amending Section 21 of Article 7, Chapter 467, Acts of the 44th Legislature, Second Called Session, 1935, as amended (compiled as Article 666-21 of Vernon's Annotated Penal Code of Texas) increasing the tax on distilled spirits and wine; specifically repealing certain enumerated statutes and acts relating to taxation and certain other laws replaced by this Act; providing for rules and regulations for administration; providing rules of construction and interpretation of this Act; providing a savings clause; providing a severability clause; providing for an effective date; and declaring an emergency.

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

Section 1. That the following chapters and articles are adopted and shall constitute a new title of the Revised Civil Statutes of Texas to be known as "Title 122A, Taxation-General."

"TITLE 122A—TAXATION—GENERAL

CHAPTER 1

GENERAL PROVISIONS

Art. 1.01. Applicability of Standard Rules of Construction.

Unless specifically altered by this act or unless the context requires otherwise, the provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of Texas, and of Acts, Fiftieth Legislature, 1947, Chapter 359 compiled as Texas Civil Statutes, Article 23a (Vernon's 1948) apply to this Act.

Art. 1.02. Section and Article Headings.

Sections and article headings are not a part of this act. They are mere catch-words designed to give some indication of the contents of the sections and articles to which they are attached.

Art. 1.03. Revenue Duties; Governor; Comptroller.

The Governor may, whenever in his judgment the public service demands it, direct the Comptroller to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the Comptroller shall report to him in writing the results thereof,

and point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of those delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by the Comptroller to be delinquent. The Comptroller shall have power at any time to examine and check up all and any expenditures of money appropriated for any of the State institutions or for any other purpose or for improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. The Comptroller shall also have power and authority and it is hereby made his duty, to fully investigate any State institution when so directed by the Governor or required by information coming to his own knowledge. He shall investigate the manner of conducting the same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof, and investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor. When the Comptroller, acting under the direction of the Governor, calls on any person connected with the public Service to inspect his accounts, records or books, said person so called upon shall submit to said agent all books, records and accounts so called for without delay.

Art. 1.04. Penalties recovered by suit.

(1) All delinquent State taxes and penalties therefor due and owing to the State of Texas, of every kind and character whatsoever, including all franchise, occupation, gross receipts, gross production, gross premiums tax on insurance companies, inheritance, gasoline, excise and all other State taxes which become delinquent other than State ad valorem taxes on property shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas.

(2) The venue and jurisdiction of all suits arising hereunder is hereby conferred upon the courts of Travis County.

(3) For the purpose of carrying out the terms of this Article the Comptroller or any authorized agent shall have the authority to examine at the principal or any other office in the United States of any person, firm, agent or corporation permitted to do business in this State, all books, records and papers and also any officers or employees thereof, under oath; and failure or refusal of any person, firm, agent or corporation to permit such examination shall, upon certification of such refusal by the Comptroller to the Secretary of State, immediately forfeit the charter or permit to do business in this State until such examination as is required to be made is completed. The Comptroller shall not make public or use said information derived in the course of said examination of said books, records and papers and/or officers or employees except for the purpose of some judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party.

Art. 1.05. Payment of license or privilege taxes under protest.

(1) Protest. Any person, firm, or corporation who may be required to pay to the head of any department of the State Government any occupation, gross receipts, franchise, license or other privilege tax or fee, and who believes or contends that the same is unlawful and that such public official is not lawfully entitled to demand or collect the same shall, nevertheless, be required to pay such amount as such public official charged with the collection thereof may deem to be due the State, and shall be entitled to accompany such payment with a written protest, setting out fully and in detail each and every ground or reason why it is contended that such demand is unlawful or unauthorized.

(2) Suits for recovery of taxes or fees. Upon the payment of such taxes or fees, accompanied by such written protest, the taxpayer shall have ninety (90) days from said date within which to file suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and none other. Such suit shall be brought against the public official charged with the duty of collecting such tax or fees, the State Treasurer

and the Attorney General. The issues to be determined in such suit shall be only those arising out of the grounds or reasons set forth in such written protest as originally filed. The right of appeal shall exist as in other cases provided by law. Provided, however, where a class action is brought by any taxpayer all other taxpayers belonging to the class and represented in such class action who have properly protested as herein provided shall not be required to file separate suits but shall be entitled to and governed by the decision rendered in such class action. A class action shall include any suit filed by any two or more persons, firms, corporation or association of persons who have paid under protest such taxes or fees referred to in section (1) hereof.

(3) Payment of additional taxes under protest after filing suit; amendment of petition; jurisdictional amount. After such suit is filed in a Court of competent jurisdiction in Travis County, and before such suit is tried by said Court, said taxpayer pays additional taxes under protest, the grounds of protest being the same as in the original petition filed in said Court, and the total of said taxes exceeds the jurisdiction of said Court, then the taxpayer will be authorized to file suit within ninety (90) days after the payment of such additional taxes in a Court in Travis County which has jurisdiction of the total amount of said taxes paid under protest, and when such suit is filed it shall be deemed to have been filed in conformity with provisions of this Chapter; provided further, that a taxpayer may amend his original petition setting up such additional taxes paid under protest, and such amendment, if filed within ninety (90) days after the date of payment of such additional taxes under protest, shall not be considered a new cause of action. Provided further, that if any appeal is taken from the final judgment rendered in such suit, the taxpayer will not be relieved of the duty of continuing paying said taxes under protest pending the appeal of said case; however, it will not be necessary for such taxpayer to file suit within ninety (90) days after the payment of such taxes, but the disposition of such taxes shall be governed by the outcome of the original suit. The provisions of this Article shall apply to all taxes paid under protest, and which taxes have not been finally determined to belong to the State. Added Acts 1939, 46th Legi., p. 643, Sec. 3.

(4) Lists remitted to State Treasurer. It shall be the duty of such public official to transmit daily to the State Treasurer all money so received, with a detailed list of all those remitting same, and he shall inform the State Treasurer in writing that such money was paid under protest as hereinabove provided. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each department; and the cashier of the Treasury Department shall keep a cash book to be called "Suspense Cash Book," in which to enter such deposit receipts. Upon the receipt of such money by the State Treasurer it shall be his duty and he is hereby required to immediately and forthwith place the same in State depositories bearing interest in the same manner as any other funds of the State required to be placed in such depositories at interest, and the State Treasurer shall further be required to allocate whatever interest is earned on such funds and to credit the amount thereof to such suspense account until the status of such money is finally determined as herein provided.

(5) Refunds and warrants. If suit is not brought within the time and within the manner provided in this Article, or in the event it finally be determined in such suit that the sums of money so paid or any portion thereof, together with the prorata interest earned thereon, belong to the State, then and in that event it shall be the duty of the State Treasurer to transfer such money from the suspense account to the proper fund of the State by placing the portion thereof belonging to the State in such fund by the issuance of a deposit warrant. When such deposit warrant or warrants are issued, they shall be entered in the cash book, and the proper fund to which such money is so transferred shall be properly credited therewith. In the event, however, that suit is brought by such taxpayer within the time and within the manner provided in this Article, and it be finally determined that such money so paid by such taxpayer, or any part thereof, was unlawfully demanded by such public official and that the same be-

longs to such taxpayer, then and in that event it shall be the duty of the State Treasurer to refund such amount, together with the pro rata interest earned thereon, to such taxpayer by the issuance of a refund warrant, the same to be issued in separate series and to be used for making such refunds, to be styled and designated "Tax Refund Warrants" and such warrants shall be written and signed by the Comptroller and countersigned by the State Treasurer and charged against the suspense account, as hereinabove provided and shall then be returned to the Comptroller and delivered by him to the persons entitled to receive the same.

Art. 1.06. Injunctions against collection of excise, occupation, and certain other taxes, fees and penalties.

(1) Before any restraining order or injunction shall be granted in this State to restrain or enjoin the collection of any excise tax, occupation tax, sales tax, severance tax, gross receipts tax, license or permit tax, and registration or filing fee or any statutory penalties assessed for failuse to pay any of such taxes and before any restraining order or injunction shall be granted against any State official or his authorized representatives in this State to restrain or enjoin the collection of any of the foregoing taxes, fees and penalties, the applicant therefor shall pay into the suspense account of the State Treasurer all taxes, fees and penalties then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent or attorney.

(2) Provided, however, that unless otherwise provided by statute, said applicant may, in lieu of paying such taxes, fees and penalties into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient bond to guarantee the payment of such taxes, fees and penalties in an amount equal to twice the amount of all taxes, fees and penalties then due and which may reasonably be expected to become due during the pendency of said injunction. The amount of such bond and the sureties thereon shall be approved by and acceptable to the judge of the court granting said injunction and the Attorney General of this State and the application for said restraining order or injunction shall reflect under oath of the applicant, his agent or attorney, that said bond has been approved and filed as aforesaid. Whenever it appears to the Attorney General that any such bond has become insufficient to cover double the amount of the taxes, fees and penalties accruing subsequent to the granting of said injunction, the said Attorney General shall demand of said applicant that additional bond be filed.

(3) Provided, further, that said applicant shall keep during the pendency of the injunction and for a period of one (1) year thereafter open to the inspection at all times of the Attorney General of this State and all other State officials authorized to enforce the collection of such taxes, fees and penalties, a well bound book record of all taxes accruing during the pendency of such restraining order or injunction. Such book record shall include a record of purchases, receipts and sales or other disposition of all commodities, products, materials or articles upon which such taxes are levied or by which the amount of such taxes are measured.

(4) Provided further, that said applicant shall make and file with the State Official authorized to enforce the collection of the tax involved, on Monday of each week, a report on a form or forms to be prescribed by said State official showing the weekly accruals of the tax involved together with total purchases, receipts, sales and other disposition of all commodities, products, materials, and articles on which the tax involved in such injunction is levied or by which such tax is measured. Such report shall also show the name and address of all persons from whom such commodities, products, materials and articles were purchased or received and the name and complete address of all persons to whom such commodities, products, materials and articles were sold or distributed. If payment of the tax involved is evidenced or measured by the sale or use of stamps or tickets, a complete record of all such stamps and tickets used, sold or handled shall be kept and shall be included in said report.

(5) Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing, if said ap-

plicant fails, at any time before the case shall have been finally disposed of by the court of last resort to keep the records or make and file the reports required herein or to comply with the Attorney General's demand to file any additional bond necessary to cover double the amount of taxes, fees and penalties accruing subsequent to the granting of said injunction or in the absence of a bond, to pay, on Monday of each week, into the suspense account of the Treasurer of Texas all taxes, fees and penalties involved in said litigation and thereafter becoming due, and such payments shall be made before said taxes, fees and/or penalties become delinquent.

(6) Any proceedings to enjoin the collection of any of the foregoing taxes shall be in a court of competent jurisdiction in Travis County, Texas.

(7) The Attorney General or any State official authorized to enforce the collection of the tax involved may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Article or has violated the same. Upon the filing of said affidavit the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which the applicant resides or any other peace officer in this State.

(8) In the event the injunction is finally dissolved or dismissed the Treasurer shall make demand upon the applicant and his sureties on any bond filed in lieu of the payment of any taxes, fees and penalties, for immediate payment of said taxes, fees and penalties which if not paid shall be recovered in a suit to be filed by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

(9) Provided further, that if said injunction is dissolved or dismissed all taxes, fees and penalties or other funds paid into the suspense account to the Treasurer under the provisions of this Article shall be paid to the funds to which said taxes, fees and penalties are allocated.

(10) If the final judgment maintains the right of the applicant to a permanent injunction to prevent the collection of such taxes, the funds so deposited shall be refunded by the Treasurer to said applicant together with any depository interest the Treasurer may have collected for the deposit of such funds.

Art. 1.07. Lien; failure to withhold taxes; penalties; fines, etc. cumulative.

(1) All taxes, fines, penalties and interest due by an individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, trustee, or receiver to the State of Texas, by virtue of this Title, shall be a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any individual, firm, association, joint stock company, syndicate, co-partnership, corporation agency, trustee, or receiver. This lien shall be cumulative, and in addition to the liens for taxes, fines, penalties, and interest now provided by law, and shall attach as of the date such tax or taxes are due and payable.

(2) Any person, firm, corporation, or association of persons purchasing any natural resources upon which a tax is levied by this Title who fails to deduct and withhold the proper amount of taxes which are due and unpaid under any provision of this Title, shall be liable to the State for the full amount of such taxes plus any accrued penalties and interest thereon.

(3) All penalties, fines, forfeitures of penal offenses provided in this Title as to the same offense, shall be cumulative of one another and of any other fines, penalties, forfeitures or penal offenses provided by any other law of this State applicable to such offense. Should any such fines, penalties, forfeitures, or penal offenses be in conflict so that such could not be cumulative as above provided, then that law or part of the law containing the provision for the highest penalty in dollars shall be effective and apply as to each such offense, and that law or part of the law containing the provision for the highest fine in dollars (where a fine alone is pro-

vided for) shall be effective and apply to each such offense, and in case of forfeiture that law or part of the law containing a provision for the most onerous forfeiture shall be effective and apply to each such offense, and in case of penal offenses containing a provision providing for imprisonment, that law or part of the law containing the provision for the longest maximum imprisonment shall be effective and apply to each such offense; and in each such instance, the lesser fine, penalty, forfeiture, penal offense or punishment shall be suspended.

Art. 1.08. Certified Claim as Evidence.

If any person, firm, corporation, or association of persons engaging in or pursuing any occupation on which, under the laws of this State, an occupation tax is imposed, who fails or refuses to pay such tax, and it becomes necessary to intervene in any manner for the establishment or collection of said tax claims or penalties, a claim showing the amount of tax due the State, certified to by the Comptroller of Public Accounts or his chief clerk, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided however, that the incorrectness of said claim may be shown.

Art. 1.09. Levy by Cities and Counties.

No city, county or other political subdivision may levy an occupation tax levied by this Act unless specifically permitted to do so by the Legislature of the State of Texas.

Art. 1.10. Rules and Regulations, Civil Penalty.

The Comptroller of Public Accounts shall have the power and authority to make and publish rules and regulations, not inconsistent with any existing laws or with the Constitution of this State or of the United States, for the enforcement of the provisions of this Title and the collection of revenues hereunder.

Forfeiture for violation of rules and regulations. If any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts or violate the same, he shall forfeit to the State the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

Art. 1.11. Tax Credits.

(1) This Article applies to any occupation, excise, gross receipts, franchise, license or other privilege tax or fee collected or administered by the Comptroller of Public Accounts. It does not apply to the state ad valorem tax.

(2) When the Comptroller determines that any person, firm or corporation has through mistake of law or fact overpaid the amount due the State on any tax collected or administered by the Comptroller, the Comptroller may with the consent of the taxpayer credit the person, firm or corporation overpaying the tax with the amount of such overpayment.

(a) Consent by a person, firm or corporation to accept a tax credit under this Article constitutes an irrevocable election and a waiver of any further claim or cause of action for the overpayment credited.

(b) Overpayments shall be credited only to liability for the same tax overpaid, and for penalties and interest due the State for late or insufficient payments of the same tax.

(c) Credits shall not include any interest on the amount overpaid nor shall credits bear any interest after issuance.

(d) No person, firm or corporation may receive credit on any one tax in any State fiscal year in excess of Five Thousand Dollars ($5,000).

(e) Credits for overpayment issued by the Comptroller are not assignable.

(f) Credits issued expire at the end of five (5) years from the date of issuance by the Comptroller. At the end of this five (5) years any outstanding balance credited but not set off against tax liability including any penalties or interest is automatically cancelled. Cancellation extinguishes the outstanding balance as an obligation of the State and no suit may be brought under this or any other law to collect the outstanding balance.

(g) The Comptroller shall keep a public record of credits issued. He may

prescribe rules and regulations for the administration of this Article.

(3) This Article is cumulative of all other laws concerning the payment of taxes, and does not affect the provisions of Acts 1933, 43rd Legislature, Ch. 214, as amended (codified as Art. 1.05 of this Chapter) concerning the payment of taxes under protest.

CHAPTER 2
POLL TAX

Art. 2.01.

There shall be levied and collected from every person between the ages of twenty-one (21) and sixty (60) years, resident within this State on the first day of January of each year (Indians not taxed, and persons insane, blind, or those who have lost one (1) hand or foot, or are permanently disabled, excepted), an annual poll tax of One Dollar and Fifty Cents ($1.50). One Dollar ($1) for the benefit of the free schools, and Fifty Cents (50¢) for general revenue purposes. Said Tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. No county shall levy more than Twenty-five Cents (25¢) poll tax for county purposes.

CHAPTER 3
TAX ON PRODUCERS OF NATURAL GAS

Art. 3.01. Calculation of Tax.

(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of One Cent (1¢) per one thousand (1,000) cubic feet.

(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; and (c) gas used for lifting oil, unless sold for such purposes.

Art. 3.02. Market Value.

(1) The market value of gas produced in this State shall be the value thereof at the mouth of the well; however, in case gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments made by purchasers to producers for the purpose of reimbursing such producers for taxes due hereunder shall not be considered a part of the producer's gross cash receipts. In all cases where the whole or a part of the consideration for the sale of gas is a portion of the products extracted from the producer's gas or a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including any bonus or premium; providing that notwithstanding any other provision herein to the contrary, where gas is processed for its liquid hydrocarbon content and the residue gas is returned by cycling methods, as distinguished from repressuring or pressure maintenance methods, to some gas producing formation, the taxable value of such gas shall be three-fifths (3/5) of the gross value of all liquids extracted, separated and saved from such gas, such value to be determined upon separation and extraction and prior to absorption, refining or processing of such hydrocarbons and such value prior to refining shall be the value of the highest posted price of crude oil in the field where said gas is produced or in the nearest oil field in the event no oil is produced in said field and the quantity of the products shall be measured by the total yield of the processing plant from such gas.

(2) All condensate recovered from gas shall be taxed at the same rate as oil and shall be valued for the purpose of computing the tax due thereon at the prevailing market price for condensate in the general area where the same is recovered. The term "condensate" shall include all liquid hydrocarbons that are or can be recovered from gas by means of a separator but shall not include any liquid hydrocarbons which can only be recovered from gas by refrigeration or absorption and separated by a fractionating process.

Where additional liquid hydrocarbons other than condensate are recovered from gas the taxable value of such additional liquid hydrocarbons shall be determined by deducting from the total receipts of the producer for all liquid hydrocarbons recovered

from his gas the taxable value assigned to the condensate and the applicable rate set forth in sub-section (1) of Article 3.01 shall be applied to the difference to determine the tax due hereunder on such additional liquid hydrocarbons.

Art. 3.03. Records and Payment.

(1) The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of each such producer to keep accurate records in Texas of all gas produced, making monthly reports under oath as hereinafter provided.

(2) The purchaser of gas shall pay the tax on all gas purchased and deduct the tax so paid from the payment due the producer or other interest holders, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer; such moneys so deducted from payments due producers for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by said purchaser, and shall be remitted to the State Tresaurer in accordance with the terms and provisions of this Act; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased.

(3) The tax herein levied shall be due and payable at the office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each such producer shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas produced, less the exclusions and at the pressure base set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the first purchaser of said gas, and such other information as the Comptroller may desire; such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied. In no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in the event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such a purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make such payment and shall be entitled to reasonable attorney's fees and court costs incurred by legal action.

(4) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

(5) The tax herein levied shall be borne ratably by all interested parties, including royalty interests; and producers and/or purchasers of gas are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due and remit the same to the Comptroller.

Art. 3.04. Definitions.

(1) For the purpose of this Act "producer" shall mean any person owning, controlling, managing, or leasing any gas well and/or any person who produces in any manner any gas by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any gas or its value whether produced by him, or by some other person on his behalf, either by lease, contract, or otherwise.

(2) "First purchaser" shall mean any person purchasing gas from the producer.

(3) "Subsequent purchaser" shall mean any person who purchases gas for any purpose whatsoever, when said gas is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting gas or any instrumentality that may now be used or come into use for such purpose.

(5) "Gas" shall mean natural and

casinghead gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate and/or condensate, or other products.

(6) The term "sweet gas" shall mean all natural gas except sour gas and casinghead gas.

(7) The term "sour gas" shall mean any natural gas containing more than one and one-half (1½) grains of hydrogen sulphide per hundred (100) cubic feet, or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet.

(8) The term "casinghead gas" shall mean any gas and/or vapor indigeneous to an oil stratum and produced from such stratum with oil.

(9) "Report" shall mean any report required to be furnished in this Act or that may be required by the Comptroller in the administration of this Article.

(10) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(11) "Production" or "total gas produced" shall mean the total gross amount of gas produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Article shall be measured or determined by meter readings showing one hundred (100) per cent of the full volume expressed in cubic feet.

(12) For the purposes of this Chapter, the term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas (including natural and casinghead) contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(13) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest is that of the person having the management and operation of the well.

(14) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

Art. 3.05. Liability for Tax; Payment.

(1) The tax herein imposed on the producing of gas shall be the primary liability of the producer as hereinabove defined, and every person purchasing gas from producer thereof and taking delivery thereof at or near the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending lawsuit in the State of Texas or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or the University of Texas and any gas producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any tax-paying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it relieve any subsequent purchaser from

the payment of same, where the first purchaser does not account for and pay said tax, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the persons primarily liable therefor.

Art. 3.06. Verifying Reports; Investigations, Rules and Regulations.

(1) The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Chapter, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any person, subject to a tax under this Chapter, and to secure any other information directly or indirectly concerned in the enforcement of this Chapter, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Chapter, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Chapter is made, one half (½) of one (1) per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Chapter; and so much of the said proceeds of one half (½) of one (1) per cent of the occupation tax paid monthly as may be needed in such administration and enforcement is hereby appropriated for such purpose, subject however to appropriation by the Legislature. At the close of each State fiscal year unspent appropriations for enforcement purposes shall revert to the funds to which the net proceeds of the tax levied herein are paid and in the same proportions.

Art. 3.07. Delinquent Taxes.

In the event any person engaged in the business of producing any gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such person from producing gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

Art. 3.08. Penalty for Violation; Lien; Suits.

Any person, firm, association or corporation shall be subject to a penalty of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000) for failure or omission to keep the records required herein, or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interests on all property and equipment used by the producer of gas in his business of producing gas, and if any producer of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the producer of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller, incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby appropriated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

Art. 3.09. Suit to Collect Tax . Report or Audit is Evidence, Report of Transfer.

(1) If any producer or purchaser of natural and/or casinghead gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said

claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided, further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid; that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

Art. 3.10. Removal of Gas; Report of Transfer.

(1) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any natural and/or casinghead gas from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Chapter.

(2) Whenever any lease producing natural and/or casinghead gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Chapter. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation agency, or receiver formerly owning and/or operating said lease.

CHAPTER 4
OCCUPATION TAX ON OIL PRODUCED

Art. 4.01. Definitions.

(1) For the purpose of this chapter "producer" shall mean any person owning, controlling, managing or leasing any oil well and/or any person who produces in any manner any oil by taking it from the earth or waters in this State, and shall include any person owning any royalty or other interest in any oil or its value whether produced by him, or by some other person on his behalf, either by lease, contract or otherwise.

(2) "First purchaser" shall mean any person purchasing crude oil from the producer.

(3) "Subsequent purchaser" shall mean any person operating any reclamation plant, topping plant, treating plant, refinery, and/or any kind or character of processing plant, or anyone who purchases oil for any purpose whatsoever, when said oil is purchased from any person other than the producer.

(4) "Carrier" shall mean the owner, operator, or manager of any means of transporting oil or any instrumentality that may now be used or come into use.

(5) "Oil" shall mean crude oil, or other oil taken from the earth, regardless of gravity of the oil.

(6) "Report" shall mean any report required to be furnished in this Chapter or that may be required by the Comptroller in the administration of this Chapter.

(7) "Person" shall include any per-

son, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(8) "Production" or "total oil produced" shall mean the total gross amount of oil produced including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this Chapter shall be measured or determined by tank tables compiled to show one hundred (100) per cent of the full capacity of tanks without deductions for overage or losses in handling. Allowance for any reasonable and bona fide deduction for basic sediment and water, and for correction of temperature to sixty (60) degrees Fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than one hundred (100) per cent of the full capacity of tanks, then such amount shall be raised to a basis of one hundred (100) per cent for the purpose of the tax imposed by this Chapter.

(9) "Royalty owners" shall mean and include all persons owning any mineral rights under any producing leasehold within this State, other than the working interest, which working interest, is that of the person having the management and operation of the well.

(10) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(11) "Commission" shall mean the Railroad Commission of Texas.

Art. 4.02. Amount and Computation of Tax.

(1) There is hereby levied an occupation tax on oil produced within this State of 4.6 Cents per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions and shall be based upon tank tables showing one hundred per cent (100%) of production and exact measurements of contents. Provided, however, that the occupation tax herein levied on oil shall be 4.6 per cent of the market value of said oil whenever the market value thereof is in excess of One Dollar ($1) per barrel of forty-two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or other thing of value paid therefor or which such oil will reasonably bring if produced in accordance with the laws, rules, and regulations of the State of Texas.

Art. 4.03. Primary Liability; Mode of Payment; Refunds, Penalties.

(1) The tax herein imposed on the producing of crude petroleum shall be the primary liability of the producer as hereinbefore defined, and every person purchasing crude petroleum from the producer thereof and taking delivery thereof at the premises where produced shall collect said tax imposed by this Chapter from the producer. Every purchaser including the first purchaser and the subsequent purchaser, required to collect any tax under this Chapter, shall make such collection by deducting and withholding the amount of such tax from any payments made by such purchaser to the producer, and remit same as herein provided. This Section shall not affect any pending law suit in the State of Texas, or any lease agreement or contract now or that hereafter may be in effect between the State of Texas or any political subdivision thereof and/or The University of Texas and any oil producer.

(2) When it shall appear that a taxpayer to whom the provisions of this Chapter shall apply has erroneously paid more taxes than were due during any taxpaying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(3) The tax hereby levied shall be a liability upon the producer, the first purchaser, and/or subsequent purchaser or purchasers as herein provided.

(4) The tax hereby levied shall be paid by the first purchaser purchasing the same from the producer, who shall deduct the same from the amount paid producer, as aforesaid, provided, however, that the failure of first purchaser to pay said tax shall not relieve the producer from the payment of same, nor shall it re-

lieve any subsequent purchaser from the payment of same, where the first purchaser does not account for and pay said tax, and the State shall have a lien on all of the oil produced in Texas in the hands of the producer, the first purchaser and any subsequent purchaser to secure the payment of the tax, and it shall be the duty of every person purchasing oil produced in Texas to satisfy himself or itself that the tax on said oil has been or will be paid by the persons primarily liable therefor.

(5) If the oil produced by said producer is not sold during the month in which it is produced, then said producer shall pay the tax at the same rate and in the same manner as if said oil were sold during said month. In such case, however, the working interest operator may pay such tax and deduct it from the interest of the other interest holders.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties the proportionate tax due.

(7) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports under oath as hereinafter provided.

(8) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said oil were sold.

(9) The tax levied herein shall be paid monthly on the twenty-fifth day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney's fees and court costs incurred by such legal action.

(10) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of ten (10) per cent of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six (6) per cent per annum from date due until paid.

Art. 4.04. Records and Reports.

(1) A complete record shall be kept by every producer of oil within this State, said records to show the county or counties in which said producer operates, the correct name or names of the lease or leases from which oil is produced, the total number of barrels of oil produced from each lease, the correct name and address of the first purchaser, the total number of barrels of oil sold or delivered to each first purchaser and the price received therefor. And in addition shall keep a record of all oil used on the lease from which said oil is produced or which may be refined or processed in any manner by the producer upon the lease from which said oil is produced; and if said oil is not sold, the location of storage and the total number of barrels in storage, if owned by such operator, or if stored with a pipe line or a refinery, the correct name and address of such pipe line or refinery.

(2) Every producer shall file monthly on the 25th day of each month with the Comptroller under oath of the producer or his duly authorized agent a report showing the total number of barrels of oil produced by said producer during the month preceding the date of the report, the county in which the oil is produced, the correct name of the lease from which the oil is produced, the correct name and address of the first purchaser of said oil and the price received therefor, and such other information as Comptroller may require; said records and reports shall

be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(3) Every first purchaser shall keep in Texas records showing the correct name and address of the producer from whom said first purchaser buys oil, the county in which said oil is produced, the true and correct name of the lease from which said oil is produced, the total number of barrels bought, and the price paid therefor; and in addition shall keep a record showing the total number of barrels of said oil so purchased and used, refined, or processed in any manner by said first purchaser and the total number of barrels of oil sold by him, the price received therefor, and the true and correct name and address of the subsequent purchaser of said oil. On the 25th day of each month each and every first purchaser of oil shall file with the Comptroller, under oath of the first purchaser or his duly authorized agent, a report showing the total number of barrels of oil purchased during the preceding month, the price paid therefor, the correct name and address of the producer or producers from whom said oil was purchased, the county in which the oil was produced, and the correct name of the lease from which said oil was produced, and such other information as Comptroller may require; said records and reports shall be open to the inspection of the Comptroller and/or Attorney General or their duly authorized agents.

(4) Each and every subsequent purchaser, shall keep in Texas a record showing the correct name and address of each first purchaser or subsequent purchaser from whom any oil is bought, the total number of barrels purchased and the price paid therefor, the date of purchase, the disposition of said oil, the total number of barrels, used, refined, or processed in any manner by said subsequent purchaser, and if sold shall show the correct name and address of the subsequent purchaser to whom said oil is sold or delivered and the date of said sale and/or delivery, and the price received therefor.

(5) Each and every subsequent purchaser shall file with the Comptroller on the 25th day of each month a report under oath of the subsequent purchaser or a duly authorized agent showing the correct name and address of the person from whom said subsequent purchaser has bought oil during the preceding month, the total number of barrels purchased, the price paid therefor, and the disposition of said oil; said reports to show the total number of barrels of oil used, refined, or processed in any manner by said subsequent purchaser and the correct name and address of any subsequent purchaser to whom said oil was sold and the number of barrels sold, and the price received therefor; said records and reports shall be open to the inspection of the Comptroller or the Attorney General or the duly authorized agents of the Comptroller or Attorney General.

(6) Royalty owners shall only keep a record of all moneys received as royalty from any producing leasehold within this State. They shall also keep a copy of all settlement sheets furnished them by the purchaser or operator or any other statement showing the number of barrels of oil from which royalty was received and the amount of tax deducted; said records shall be open to the inspection of the Comptroller or the Attorney General or their duly authorized agents.

(7) Every carrier, including all railroads, barges, trucks, or pipe lines, carrying or transporting oil for hire, for themselves or their owners, shall keep in Texas a complete and accurate record of all oil so handled by months, showing date received, number of barrels, of whom received, point of delivery, to whom delivered and manner of transportation, and such records shall be open to the inspection of the duly authorized agents of the Comptroller or the Attorney General at all times, and, if requested by the Comptroller, shall furnish information and reports of movements as often as required by the Comptroller; provided however, that nothing in this bill imposing a tax on those enjoying the privilege herein taxed shall be construed as impairing any contract whereby any interest holder or other person has agreed to pay any part of the tax in the past or in the future, but said tax is imposed on all of said interest holders as their interests appear and shall be paid as herein provided, and this Act is not intended to relieve any person of any contractual liability whatsoever.

Art. 4.05. Purchasers to Deduct Tax.

Purchasers buying oil from properties in litigation or in receivership, bankruptcy, or any other legal proceedings, or covered by assignments, are required to deduct the amount of the taxes levied by this Act, before payment is made to the producers, trustees, assignees or to any person who claims ownership of said funds, or before the proceeds of said purchase of oil is impounded or escrowed by said purchaser pending such litigation or tenure of assignments, and shall remit said tax deducted in the same manner as if said oil had been purchased from any other source, and providing that said purchaser shall not be liable to any claimant of said funds on account of payment of said tax.

Art. 4.06. Reports to Comptroller; Payment of Tax.

(1) At the time of filing the reports herein required, the first purchaser shall pay to the Comptroller by legal tender or cashier's check, payable to the State Treasurer, the tax herein required to be paid. Failure to pay said tax on the twenty-fifth day of the month immediately following, shall cause said tax to become delinquent and a penalty of ten (10) per cent of the amount of said tax shall be added, such tax and penalty to bear interest at the rate of six (6) per cent per annum from the date due until the date paid.

Art. 4.07. Prior Lien of State for Taxes; Penalties and Interest.

(1) For the tax, penalties and interest herein provided for, the State shall have a prior and preferred lien on every leasehold interest, ownership of the oil rights, or the value of oil rights or other interest, including oil produced and oil runs owned by the person owing any tax herein, and in addition thereto such lien shall include equipment, tools, tanks, and all other implements used on said lease from which oil is produced. Said lien shall extend to and be enforceable against any property, either real or personal, or both, owned by any person or persons made liable for the tax herein levied, which property is not exempt from forced sale by reason of existing laws or the Constitution of this State.

(2) It is further provided that when any oil is discovered upon which the tax herein provided for has not been paid as and when provided for herein, any sheriff, ranger or other peace officer is authorized to levy on said oil by notice to the owner or other person in charge, that said oil is levied on for taxes due on it and after ten (10) days notice posted at the site of the oil, said officer shall proceed to sell said oil to the highest bidder for cash. Any money received for said oil in excess of the taxes and ten (10) per cent commission to the officer selling the property, shall be paid by said officer to the owner of said oil. The officer selling same shall transmit the amount of the tax to the Comptroller or his duly authorized representative. Should the oil sold fail to sell for enough to pay said taxes, the officer selling same shall deduct ten (10) per cent of the amount received and forward the balance to the Comptroller. Provided however, that no ranger shall receive any commission for services performed in the enforcement of this provision.

Art. 4.08. Collection of Delinquent Taxes, Venue, Evidence.

(1) It shall be the duty of the Attorney General to bring legal action for the collection of delinquent taxes herein levied, and a suit instituted shall attach to oil in storage, in transit, or being produced by such operator, and venue for such suits herein provided shall be in the District Court of Travis County, Texas.

(2) If any producer or purchaser of crude oil, or subsequent purchaser, fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Chapter and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such producer or purchaser or representative of said producer or purchaser or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of crude oil produced or purchased on which such tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said producer or purchaser when filed and sworn to by such representative as being made from the records of said producer or purchaser, such report or audit shall be admissible in evidence in such pro-

ceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided further that such report or audit may be admitted in evidence only against the party by or for whom it was made.

(3) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said producer or purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report of audit are past due and unpaid; and all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

Art. 4.09. Unlawful Removal of Oil From Lease.

On notice from the State Comptroller, it shall be unlawful for any person to remove any oil from any lease in this State whenever the owner or operator of said lease has failed to file reports as required under the provisions of this Act.

Art. 4.10. Lease Transfers, Noted on Reports.

(1) Whenever any lease producing oil changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation agency, or receiver who will operate said lease and be responsible for the filing of reports provided for in this Act.

(2) It further shall be the duty of the new owner or operator of said leases to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the individual, firm, association, joint stock company, syndicate, co-partnership, corporation, agency, or receiver formerly owning and/or operating said lease.

Art. 4.11. Duties of Comptroller.

(1) It shall be the duty of the Comptroller to promulgate rules and regulations governing the detail administration of the terms and requirements of this Chapter not specifically mentioned herein; to employ auditors and supervisors for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. Before any division or allotment of the occupation tax on oil collected under the provisions of this Chapter is made, one-half of one per cent of the gross amount of said tax shall be set aside in the Treasury subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of the said proceeds of one-half of one per cent of the occupation tax on oil paid monthly as may be needed in such administration and enforcement shall be expended in the amounts and for the purposes fixed by the Legislature in the General Appropriation Bill. Any unexpended portion of said funds so specified shall at the end of the fiscal year revert to the respective funds or accounts in proper proportions to which the occupation tax on oil is proportioned at the end of the fiscal year.

CHAPTER 5
OCCUPATION TAX ON SULPHUR PRODUCERS

Art. 5.01. Occupation Tax on Sulphur Producers. Amount of Tax.

Sulphur Producers: Each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, wells or shafts, or who produces sulphur by any method, system, or manner within this State shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller in this State, or if such person be other than individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making said report shall pay to the Treasurer of this

State an occupation tax for the quarter ending on said date an amount equal to One Dollar and Forty Cents ($1.40) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter.

Art. 5.02. Reports, Penalties for Failure to Keep Records.

(1) Each person subject to the payment of this tax shall cause to be made, kept, and preserved a full and complete record of all sulphur produced in this State by it, all of which record shall be open at all times to official inspection and examination by the Comptroller or the Attorney General, or any employee of or representative of the Comptroller or the Attorney General. Said records may be destroyed after three (3) years from the last entry appearing in any such record. Any person failing to keep such record, or records, as herein required, shall forfeit to the State of Texas as a penalty any sum not less than Five Hundred Dollars ($500) nor more than Five Thousand Dollars ($5,000), payable to the State of Texas, and each ten (10) days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties for each such period of failure to keep such records.

Art. 5.03. Failure to Pay Tax. Penalties.

(1) Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this Chapter within thirty (30) days after same is due and payable shall pay to the State as a penalty an additional amount equal to ten per cent (10%) the taxes due, and such tax and penalty shall draw interest at the rate of six per cent (6%) per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General shall bring suit in behalf of the State, to recover the amount of taxes, penalties, and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, or other concern by whatever name or howsoever organized, formed, or created.

(2) The Comptroller may require such other information and such additional reports as he may deem advisable.

CHAPTER 6
MOTOR VEHICLE RETAIL SALES AND USE TAX

Art. 6.01. Tax on Retail Sales of Motor Vehicles.

(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to one and six-tenths per cent (1.6%) of the total consideration paid or to be paid to the seller by the buyer, which consideration shall include the amount paid or to be paid for said motor vehicle and all accessories attached thereto at the time of the sale, whether such consideration be in the nature of cash, credit or exchange of other property, or a combination of these. In the event the consideration received by the seller includes any tax imposed by the Federal government, then such Federal tax shall be deducted from such consideration for the purpose of computing the amount of tax levied by this Article upon such retail sale.

(2) In all cases of retail sales involving the exchange of motor vehicles, the party transferring the title to the motor vehicle having the greater value shall be considered the seller, and no tax is imposed upon the transfer of a motor vehicle traded in upon the purchase of some other motor vehicle. Where such a retail sale involves an even exchange, each of the two parties to the transaction shall pay a tax of Five Dollars ($5). Where a person makes a gift of a motor vehicle, the donee shall pay a tax of Ten Dollars ($10).

Art. 6.02. Duties of Comptroller of Public Accounts.

The Comptroller of Public Accounts shall have general supervision over the collection of the taxes imposed by this Chapter. He may establish rules and regulations for the determination of taxable value of new motor vehicles and all County Tax Collectors and Assessors shall be furnished with such rules and regulations, and such rules and regulations shall be consistently applied to the determination of taxable value of each new motor vehicle purchased in this State or taxable under the use tax levied by Art. 6.03 of this Chapter.

Art. 6.03. Use Tax.

There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State or by a person, firm or corporation domiciled or doing business in this State. Such tax shall be equal to one and six-tenths per cent (1.6%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State.

Art. 6.04. New Resident Use Tax.

When a person makes application for the initial certificate of title in this State on a particular motor vehicle, he shall pay a use tax on that motor vehicle in the sum of Fifteen Dollars ($15). No certificate of title or motor vehicle registration for such motor vehicle shall be issued until the use tax imposed by this Article has been paid. However, a person is not liable for the tax imposed by this Article if the sales or use tax imposed by any other provision of this Chapter has been previously paid upon such motor vehicle. It is the purpose of this subsection to impose a use tax upon motor vehicles brought into this State by new residents of this State.

Art. 6.05. Definitions.

(1) The terms "sale" and "sales" as herein used shall include installment and credit sales, and the exchange of property as well as the sale thereof for money, every closed transaction constituting a sale. The transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(2) The term "retail sale" or "retail sales" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

(3) The term "motor vehicle" as used in this Act shall mean every self-propelled vehicle in or by which any person or property is or may be transported upon a public highway, including trailers and semitrailers. It shall not mean any device moved only by human power or used exclusively upon stationary rails or tracks and shall not include farm machinery or farm trailers or road building machinery or any self-propelled vehicle used exclusively to move any of the three immediately preceding vehicles.

Art. 6.06. Fees and Taxes Are Additional.

The license fees and taxes imposed by or under this Chapter shall be in addition to any and all license fees and taxes imposed by or under any other law of this State.

Art. 6.07. Collection of Taxes.

The taxes levied in this Chapter shall be collected by the Assessor and Collector of Taxes of the county in which any such motor vehicle is first registered or first transferred after such a sale; the Tax Collector shall refuse to accept for registration or for transfer any motor vehicle until the tax thereon is paid.

When a tax becomes due on a motor vehicle purchased outside of this State and brought into this State for use upon the highways the person, firm, or corporation operating said motor vehicle upon the public highways of this State shall pay the tax imposed by Art. 6.03 to the Tax Collector of the county in which such motor vehicle is to be registered. The tax shall be paid at the time application is made for registration of said motor vehicle, and the Tax Collector shall refuse to issue the registration license until the tax is paid.

Art. 6.08. Affidavits and Sales Invoices as to Considerations, Sales Records.

(1) The purchaser and seller shall make a joint affidavit setting forth the then value in dollars of the total consideration, whether in money or other things of value, received or to be received by the seller or his nominee in a retail sale. Where a transfer of title to a motor vehicle is made either as the result of an even exchange or of a gift, the two principal parties to such a transaction shall make a joint affidavit setting forth the facts describing the nature of the transaction. In an even exchange no transfer of title shall be accomplished until the two principal parties have paid a tax of Five Dollars ($5) each to the Tax Assessor and Collector. Where any party to a sale, exchange, even exchange or gift is a corporation, the president, vice president,

secretary, manager or other authorized officer of the corporation shall make the affidavit for the corporation. When any tax imposed by this Chapter is paid to the Tax Assessor and Collector, the person upon whom the tax is imposed by this Act shall file with the Tax Assessor and Collector the joint affidavit required by this Article. The Tax Collector and Assessor shall keep copies of the affidavits until they are called for by the Comptroller of Public Accounts or his representatives for auditing.

(2) The seller shall keep complete records of each motor vehicle transferred by him at a retail sale including a true and complete copy of the invoice pertaining to the transaction described by such affidavit. Said invoice shall show the full price of the motor vehicle plus the itemized price of all accessories attached thereto. The record shall be retained by the seller at his principal office for at least two (2) years from the date of the transfer of the motor vehicle. All sales and supporting records of each seller shall be open to inspection by the Tax Assessor and Collector and the Comptroller of Public Accounts or his authorized representative.

Art. 6.09. Affidavit Error Fee.

(1) Where the joint affidavit incorrectly states the amount of the consideration actually received by the seller so that the tax actually paid is less than that which was actually due, the seller shall pay an affidavit error fee as follows:

(a) Twenty-five Dollars ($25) if the actual consideration received by the seller was from five (5) through ten (10) per cent greater than the consideration upon which the tax was paid, and

(b) One Hundred Dollars ($100) if the actual consideration received by the seller was in excess of ten per cent (10%) greater than the consideration upon which the tax was paid.

(2) The seller shall pay the affidavit error fee to the Tax Collector and Assessor. One-half of the affidavit error fee shall be retained by the county as a fee of office or paid into the officers' salary fund of the county, as is provided by general law. The remainder of the affidavit error fee shall be paid over to the State.

Art. 6.10. Receipts; Disposition of Collections.

The Tax Assessor and Collector shall issue a receipt to the person paying the taxes imposed by this Chapter, making two duplicate copies of the said receipt. The Comptroller of Public Accounts shall prescribe the form of the receipt. On the tenth day of each month, the Tax Assessor and Collector shall forward ninety-six and one-half per cent (96.5%) of the money collected from the taxes imposed by this Chapter and one-half of the affidavit error fees collected during the preceding month to the Comptroller of Public Accounts, together with one duplicate copy of each receipt issued by him to persons paying the tax or fee imposed by this Chapter. The Tax Assessor and Collector shall retain one duplicate receipt as a permanent record in his office and shall retain three and one-half per cent (3.5%) of the taxes and one-half of the affidavit error fees collected as fees of office, or to be paid into the officers' salary fund of the county as provided by general law.

Art. 6.11. Operation Without Payment of Tax.

If any person shall knowingly operate any motor vehicle, such as defined in this Chapter, upon the highways of this State without the tax thereon having been paid as herein levied and provided, he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Ten Dollars ($10) nor more than Five Hundred Dollars ($500), or confined in the county jail for not less than one (1) day nor more than thirty (30) days or by both such fine and imprisonment.

Art. 6.12. Penalty for Not Keeping Records.

If any seller shall not keep and retain complete records for the space of two (2) years as provided in Article 6.08 (2) he shall be deemed guilty of a misdemeanor and punished by a fine of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500).

CHAPTER 7
CIGARETTE TAX LAW

Art. 7.01. Definitions. The following words, terms, and phrases, as used in this Chapter are hereby defined as follows:

(1) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco irrespective of size or shape and irrespective of

tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or other material than tobacco, and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper. This definition shall not include cigars.

(2) "Individual Package of Cigarettes" shall mean and include the smallest package of cigarettes ordinarily sold at retail and shall include any and every package of cigarettes upon which a federal tax is due.

(3) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency or receiver.

(4) "Place of Business" is construed to mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption, or if sold from any vehicle, train or cigarette vending machine, the vehicle train or cigarette vending machine on which or from which such cigarettes are sold shall constitute a place of business.

(5) "Stamp" shall mean the stamp or stamps printed, manufactured or made by authority of the Comptroller and issued, sold or circulated by the Treasurer and by the use of which the tax levied hereunder is paid.

(6) "Counterfeit Stamp" shall mean any stamp, label, print, tag or token which evidences, or purports to evidence, the payment of any tax levied by this Chapter, and which stamp, label, print, tag or token has not been printed, manufactured or made by authority of the Comptroller and/or issued, sold or circulated by the Treasurer.

(7) "Previously Used Stamp" shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

(8) "First Sale" shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this State.

(9) "Drop Shipment" shall mean and include any delivery of cigarettes received by any person within this State when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

(10) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas or his duly authorized assistants and employees.

(11) "Treasurer" shall mean the State Treasurer of Texas or his duly authorized assistants and employees.

(12) "Attorney General" shall mean the Attorney General of the State of Texas or his duly authorized assistants and employees.

(13) "Distributor" shall mean and include every person in this State who manufactures or produces cigarettes or who ships, transports, or imports into this State or in any manner acquires or possesses cigarettes and makes a "first sale" of the same in this State; and said term shall also include every person in this State who in any manner acquires or possesses unstamped cigarettes for the purpose of making a "first sale" of the same within this State.

(14) "Wholesale Dealer" shall mean and include every "person" other than a distributor or a salesman in the employ of a manufacturer and handling only the products of his employer who engages in the business of selling or distributing cigarettes in this State for the purpose of resale.

(15) "Retail Dealer" shall mean and include every person other than a distributor or wholesale dealer who shall sell, distribute, or offer for sale or distribution or possess for the purpose of sale or distribution, cigarettes irrespective of quantity or amount or the number of sales or distributions; and it shall also mean and include every person other than a distributor or wholesale dealer who distributes or disposes of cigarettes in unbroken individual packages or in quantities of ten (10) or more as gifts or prizes or in any other manner of distribution or disposal where no sale is involved.

(16) "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigarettes in interstate commerce and storing such cigarettes subject to distribution or delivery upon order from said person outside the State to dis-

tributors, wholesale dealers and retail dealers.

Art. 7.02. Rate of Tax. (1) A tax of Two Dollars ($2) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Four Dollars and Ten Cents ($4.10) per thousand on those weighing more than three (3) pounds per thousand is hereby imposed on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. The said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(2) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Chapter; provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided, further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package when the manufacturer of the cigarette reports and pays the said tax thereon directly to the State.

Art. 7.03. Sales by Post, Camp or Unit Exchange Not to Be Taxed. (1) Post, Camp, or Unit Exchanges established and operated within the State of Texas, by the United States Military, Naval, or Marine forces and not otherwise, on Military, Naval or Marine Posts, Camps, or Reservations, including any locality within this State where a cantonment camp is located and erected, where officers, soldiers, sailors, nurses, or marines of the United States Army, Navy, or Marine Corps are being trained, are hereby declared to be, and are recognized only for such tax purposes as are hereinafter set out, instrumentalities and agencies of the United States Government.

(2) It is further provided that the provisions of this law shall extend to and apply to any authorized branch of a post, Camp, or Unit Exchange which may be established for the exclusive benefit of the officers, soldiers, sailors, nurses, or marines in the Army, Navy, or Marine Corps of the United States at any time that said officers, soldiers, sailors, nurses, or marines shall be on authorized military maneuvers. It being the express intent of the Legislature by this Act to allow soldiers, sailors, nurses and marines in the Army, Navy and Marine Corps of the United States, and no others, to purchase cigarettes for their exclusive use and not otherwise from said Camp, Unit, or Post Exchange, and to consume or smoke the same without paying the tax imposed upon cigarettes used or otherwise disposed of in this State by Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended. It is also expressly provided that this law shall not be construed as authorizing any civilian employee of the United States Government or any person or persons whomsoever, other than officers, soldiers, sailors, nurses and marines of the Army, Navy or Marine Corps to purchase cigarettes free of the State Tax from a Camp, Unit, or Post Exchange, or on authorized military maneuvers or to use, consume or smoke said cigarettes without paying the State Tax as provided by the said law cited hereinabove.

All persons, except officers, soldiers, sailors, nurses or marines shall be subject to the tax imposed upon the use of cigarettes by the said Section 2, Chapter 241, as amended, Acts of the Regular Session of the 44th Legislature, and no officer, soldier, sailor, nurse or marine or person shall sell or furnish cigarettes upon which the State Tax has not been paid to any civilian employee of the United States Government or to any person or persons other than officers, soldiers, sailors, nurses and marines serving as such in the Army, Navy or Marine Corps of the United States. Provided, further, that no civilian employee of the United States Government or other person whomsoever, except such officers, soldiers, sailors, nurses or marines shall purchase or

receive cigarettes without the State tax being affixed to the package to evidence the payment of the tax levied by law from any such Post, Camp or Unit Exchange, or shall use or consume cigarettes upon which said tax has not been paid to the State and the possession by any said civilian employee of the United States Government or person other than said officers, soldiers, sailors, nurses and marines of cigarettes without the State Tax Stamp affixed to the package at any place in the State of Texas shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of sale or use without payment of the tax levied by law.

(3) It is further provided that no officers, soldiers, sailors, nurses or marines, in the Army, Navy, or Marine Corps of the United States shall remove from the confines of any military or naval post or reservation in this State, cigarettes without the State Tax Stamp affixed to the package in quantities of more than forty (40) cigarettes or shall resell, distribute or furnish cigarettes without the State Tax Stamp affixed to the package to any person, persons, firm or corporation not authorized to use or consume the same without the State Tax having been paid thereon. Any person, firm, or corporation who knowingly removes from such reservations any cigarettes or sells, furnishes, purchases, or receives any cigarettes in violation of this provision shall be subject to the penalties provided in this law. The possession of more than forty (40) cigarrettes by any said officers, soldiers, sailors, nurses or marines without the State Tax Stamp affixed to the package at any place in Texas other than a military or naval post or reservation shall be a violation of this Act and shall be prima facie evidence that such cigarettes are possessed for the purpose of a sale in Texas without the State Tax Stamps affixed.

(4) It is further recognized, declared and provided that the provision of Section 2, Chapter 241, Acts of the Regular Session of the 44th Legislature, as amended by Senate Bill No. 247, Chapter 310, Acts of Regular Session of the 45th Legislature, relating to "first sale" of cigarettes does not apply to sales by such Post, Camp, or Unit Exchanges to officers, soldiers, sailors, nurses and marines of the Army, Navy and Marine Corps under the conditions specified in the preceding sections of this law or to sales in accordance with such specific conditions and for such resale purposes to such Post, Camp, or Unit Exchange by a licensed cigarette distributor in Texas.

(5) Any person, firm, or corporation violating any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Dollars ($200.00). Each violation of any of the provisions of this Chapter shall be considered a separate offense.

Art. 7.04. Tax in Lieu of Other Occupation or Excise Tax. Provided that the taxes imposed by this Chapter shall be in lieu of any other occupation or excise tax imposed by the State or by any political subdivision of the State on cigarettes.

Art. 7.05. Sale of Stamps. Cigarette stamps shall be sold by the Treasurer in unbroken sheets of one hundred (100) stamps only and shall be purchased from and sold only by said Treasurer, except as hereinafter provided. When the Comptroller deems it proper to accept the compromise provided for herein, and the offender does not possess sufficient unused stamps to cover his unstamped stock of cigarettes, then and in that event the offender may purchase the required stamps from any distributor through a requisition from the Comptroller in order that his unstamped stock of cigarettes may be stamped immediately and under the direction of the Comptroller and the Comptroller shall have the authority to issue such requisition which shall be made in triplicate on a form prescribed by the Comptroller with the printed words "Original," "Duplicate," and "Triplicate," on the respective sheets thereof. The original requisition shall be kept by the Comptroller and the duplicate and triplicate shall be delivered to the purchaser and seller of said stamps, respectively, who shall hold such copies of requisition at all times open to the inspection of the Comptroller and the Attorney General for a period of two (2) years. The Comptroller shall have the power and authority in the enforcement of this Chapter to recall any stamps which have been sold by said Treasurer which have not been used and it shall be the duty of said Treasurer upon receipt of such recalled stamps to issue stamps of other serial numbers

therefor. The purchaser of any stamps shall be required to surrender any unused stamps for exchange upon demand of said Comptroller.

Art. 7.06. Additional Tax. (1) In Addition to the tax levied by Art. 7.02 of this Chapter, there is hereby imposed a tax to be computed as follows:

(a) From the effective date of this Chapter through August 31, 1961, a tax of Two Dollars ($2.00) per thousand on cigarettes weighing not more than three (3) pounds per thousand and Two Dollars ($2.00) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever.

(b) From and after September 1, 1961, a tax of One Dollar ($1.00) per thousand on cigarettes weighing not more than three (3) pounds per thousand and One Dollar ($1.00) per thousand on those weighing more than three (3) pounds per thousand on all cigarettes used or otherwise disposed of in this State for any purpose whatsoever. Provided, however, that the said tax shall be paid only once by the person making the "first sale" in this State and shall become due and payable as soon as such cigarettes are subject to a first sale in Texas, it being intended to impose the tax as soon as such cigarettes are received by any person in Texas for the purpose of making a "first sale" of same. No person, however, shall be required to pay a tax on cigarettes brought into this State on or about his person in quantities of forty (40) cigarettes or less when such cigarettes have had the individual packages or the seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

(2) Payment of such tax shall be evidenced by stamps purchased from the Treasurer and securely affixed to each individual package of cigarettes covering the tax thereon as imposed by this Chapter, provided that such stamps may be purchased and affixed to such individual packages of cigarettes by a manufacturer of cigarettes outside this State, in which case no further payment of tax shall be required; provided, further, that such stamps shall not be required to be purchased and affixed to sample packages of cigarettes containing no more than five (5) cigarettes per package, when the manufacturer of the cigarettes reports and pays the said tax thereon directly to the State.

(3) The net revenue derived from the tax levied under this Article shall be credited to the General Fund of this State. Provided, no portion of the revenues derived under this article shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the net revenues collected under this Article may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the net revenues derived under this Article, the said net revenues shall be credited to the General Fund; it being specifically understood that no portion of the said net revenues of this Article shall remain or be distributed under the provisions governing the said Clearance Fund.

Art. 7.07. Stamp Meters. The Comptroller is empowered to authorize licensed cigarette distributors to impress on or attach to each package of cigarettes, evidence of tax payments, by means of a stamp metering machine. The Comptroller shall adopt rules and regulations relating to the imprinting of such tax meter stamps as will result in payment of the proper taxes herein imposed. No distributor shall affix revenue tax stamps to original packages of cigarettes by imprinting tax meter stamps thereon unless such distributor has first obtained permission from the Comptroller to employ this method of affixation. The Comptroller shall regulate the use of tax meters and may, to assure the proper collection of the taxes imposed by this Chapter, revoke or suspend the privilege, theretofore granted by the Comptroller to any distributor without previous notice, to imprint tax meter stamps upon original packages of cigarettes; and provided that all distributors of cigarettes using meter stamping machines shall submit their request for settings on forms to be furnished by the Treasurer of the State of Texas. Distributors must forward their meters, at the expense of the distributor, direct to the State Treasurer, Austin, Texas, for setting, accompanied by proper remittance as required. The meter will then be set and returned, insurance and shipping cost collect upon delivery. The State Treasurer will retain the key to the

meter and the seal on said meter may be broken or removed only by the State Treasurer. All requests for meter settings shall be in units of one hundred (100) and must not exceed ninety-nine thousand, nine hundred (99,900).

Art. 7.08. Authority of Comptroller. (1) The Comptroller shall design and have printed or manufactured new cigarette tax stamps of such size and denomination and in such quantities as may be determined by the Comptroller. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes; provided that a different and separate serial number or combination letter and number may be assigned to and printed on the margin of each sheet of stamps, or other methods of identification be adopted as the Comptroller may decide. The printing or manufacturing of the stamps shall be awarded by competitive bid and the contract shall be awarded to the person submitting the lowest and best bid that will afford the greatest and best protection to the State in the enforcement of the provisions of this Act.

(2) The Comptroller, acting through the Treasurer, shall, upon receipt of the stamps hereinabove authorized to be printed or manufactured, designate the date of issue of the new design of stamps by issuing a proclamation as hereinafter provided. Provided that the stamps shall be affixed by the distributor on each individual package of cigarettes that will be handled, sold, distributed, or used; that said stamps shall be supplied by said Treasurer to all distributors holding a permit at a discount of 2¼ per cent of the face value; provided, that no discount shall be allowed to out-of-state purchasers residing in the states that do not give discounts on cigarette tax stamps purchased from said states by Texas cigarette distributors; provided that if any distributor fails or refuses to comply with any provision of the cigarette tax law or violates the same, such distributor shall be required to pay the full face value for stamps purchased during the period of such offense and the Treasurer shall, upon receipt of an affidavit from the Comptroller setting forth such violation, refuse to supply stamps at the discount provided until such offending distributor has paid any unauthorized discounts received by him and has otherwise purged himself of all such violations; provide further, that every distributor shall cause to be affixed to every individual package of cigarettes on which a tax is due, stamps of an amount equaling the tax due thereon, before any such distributor sells, offers for sale, or cansumes or otherwise distributes or transports the same.

(3) The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to such change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of this Chapter, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for stamps of the new denomination. Such exchange shall be made within sixty (60) days after the effective date of this Act, and it shall be unlawful for any person to have in his possession any stamps of the old denomination after the expiration of sixty (60) days from the effective date of this Chapter. It shall further be unlawful for any person to sell, offer for sale, or possess for the purpose of sale, cigarettes to which stamps of the old denomination are affixed. After the expiration of sixty (60) days from the effective date of this Chapter, stamps of the old denomination shall be void, provided, that stamps removed from cigarettes determined by the Comptroller to be unsaleable may be redeemed under rules and regulations promulgated or hereafter promulgated by the Comptroller. Every retail dealer and wholesale dealer having cigarettes to which stamps of the old denomination are affixed in his stock in quantities of two thousand (2,000) or more on the effective date of this Chapter shall immediately inventory the same and file a report of such inventory to the Comptroller and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the amount of additional tax due on such cigarettes computed at the new rate provided in this Chapter. Such retail dealer or wholesale dealer shall retain as a receipt to evidence payment

of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller. Failure or refusal to render such inventory shall be deemed sufficient grounds for the cancellation of any permit issued under this Chapter, and in addition thereto, any retail or wholesale dealer failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000).

(4) The Comptroller is hereby authorized to change the design of the stamp as often as he may deem such change necessary to the best enforcement of the provisions of this Chapter, and the Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued, prior to such change in the design, which are in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps of the new design. Provided, that whenever a change is made in the design of the stamps every person holding stamps of the old design shall be required to send them to the Treasurer for exchange at face value for stamps of the new design. Such exchange shall be made within sixty (60) days after the date of the issue of the new design of stamps and it shall be unlawful for any person to have in his possession any stamps of an old design after sixty (60) days from the date of issue of a new design; provided, it shall be unlawful for any person to sell, offer for sale, or possess for the purpose of sale cigarettes to which stamps of the old design are affixed after sixty (60) days from the date of issue of a new design; provided further, that after sixty (60) days from the date of issue of any new design of stamps the old design shall be void and cigarettes with stamps of the old design affixed to the individual package shall, for the purposes of the enforcement of the provisions of this Chapter, be considered as cigarettes without stamps affixed thereto. It shall be the duty of the Treasurer upon receipt of any new design of stamps authorized to be printed by the Comptroller to designate the date of issue of such new design by the issuance of a proclamation and the date of such proclamation shall be the date of issue of the new design of stamps.

Any person who shall have in his possession any cigarette tax stamps of the old design after sixty (60) days from the date of issue of a new design of stamps shall be guilty of a felony and shall be punished as set out in Article 7.37 of this Chapter.

(5) Provided that any cigarette tax stamps may be exchanged only when proof satisfactory to said Treasurer is furnished that any stamps offered to said Treasurer in exchange were properly purchased and paid for by the person offering to exchange such stamps; provided, further, that stamps which are effaced or mutilated in any manner may be refused for acceptance in exchange by said Treasurer.

The Treasurer shall keep a record of all stamps sold by him or under his direction, of all stamps exchanged by him and of all refunds made on any stamps purchased.

(6) Orders for cigarette tax stamps shall be sent direct to the Treasurer and it shall be the duty of the Treasurer to invoice the stamps ordered to the purchaser upon a form invoice to be prescribed by the Treasurer, which invoice shall be issued in triplicate and numbered consecutively. The invoice shall show the date of sale, the name and address of the purchaser, the number of stamps and their serial numbers, the denomination and value of stamps so purchased. The invoice shall be signed by the Treasurer and the original sent with stamps to the purchaser; the duplicate of the invoice shall be sent to the Comptroller and the triplicate kept by the Treasurer; provided, further, that the purchaser of said stamps shall hold the said invoice for a period of two (2) years for inspection at all times by the Comptroller and the Attorney General. No stamp affixed to a package of cigarettes shall be cancelled by any letter, numeral or any other mark of identification or otherwise mutilated in any manner that will prevent or hinder the Comptroller in making an examination as to the genuineness of said stamps.

(7) Stamps in unbroken sheets of one hundred (100) stamps may be exchanged, with the Treasurer only, for stamps of a different denomination. Provided, further, that the Treasurer

shall be authorized to make refunds on unused stamps in unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund. Such refund shall be made from revenue derived from this Act before such revenue is allocated as herein provided. The Comptroller shall have full power and authority over obsolete cigarette stamps, and the responsibility for burning said stamps is placed upon the Comptroller. Appropriations out of Cigarette Tax Enforcement Fund (No. 66) heretofore made to the State Board of Control for the purpose of paying the salary of the supervisor and for the purchase of cigarette stamps shall hereafter be made to the Comptroller of Public Accounts, Cigarette Tax Division.

(8) A distributor may order stamps shipped with draft attached to the bank with which said distributor regularly transacts business. The Treasurer is hereby authorized to ship stamps in compliance with such orders to any such bank authorized to do business in Texas under the laws of this State and the United States. Such stamps, together with the invoice required under Article 7.08, Subsection (6) of this Chapter, shall be attached to a form draft to be prescribed by the State Auditor, which draft shall show the date of shipment, the name and address of the bank, the name of the distributor and the amount of said draft. If said draft is not paid within twenty (20) days of the date thereon, it shall be returned together with the stamps attached to the Treasurer. Any distributor failing to take up such draft and stamps as ordered by him shall be notified at the end of such twenty (20) days period by the Treasurer to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps with draft attached as herein provided.

(9) The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall ship such stamps or set such meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. Any distributor who fails to forward the proper remittance within fifteen (15) days after receipt of the stamps or the set meter and the certified statement shall be notified by the State Treasurer within five (5) days after the end of the fifteen-day period to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section.

Art. 7.09. Distributors, Wholesalers, Retail Dealers. Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of cigarettes upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a cigarette permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars ($25.00) if for a distributor's permit, or a fee of Fifteen Dollars ($15.00) if for a wholesale dealer's permit, or a fee of Five Dollars ($5.00) if for a retail dealer's permit. Coin-operated cigarette or tobacco products vending machines shall be issued a retail dealer's permit. Said application shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set

forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3) and their addresses. The Comptroller may require any other information as he may desire in said applications. No distributor, wholesale dealer or retail dealer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that any distributor manufacturing, importing, or acquiring in any manner, cigarettes for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor; provided, further, that the Treasurer shall be authorized to sell stamps to such distributors acquiring cigarettes for their own personal use or consumption and not for sale or other disposal, in lesser quantities than unbroken sheets of one hundred (100) stamps.

Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a non-assignable consecutively numbered permit, designating the kind of permit and authorizing the sale of cigarettes in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provisions of this Act or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any cigarettes from such place of business until a new permit is granted or the suspension of the old permit removed. Provided, that the Treasurer may refuse to sell stamps to any person who has not obtained a permit to engage in business as a distributor or to any distributor whose permit has been revoked or suspended until such permit has been reinstated or a new permit issued.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, that any distributor, wholesale dealer, or retail dealer who is the legal owner and holder and is operating under any unexpired permit which has been issued by the Comptroller as provided by Chapter 241, Acts of the Regular Session of the Forty-fourth Legislature, as amended, shall not be required to make application for and obtain from a Comptroller a permit as required herein prior to the expiration of the twelve (12) months for which such permit was issued. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells cigarettes at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell cigarettes from or by means of a cigarette vending machine, train, automobile or other vehicle, the serial number of said vending machine, the make and motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and number of said train shall be shown on the application.

Art. 7.10. Possession of Unstamped Cigarettes. Every person, other than a distributing agent, bonded distributor, or common carrier, shall before receiving or accepting delivery of any cigarettes without stamps affixed to evidence the payment of the tax, ob-

tain from the Treasurer the requisite amount or number of stamps necessary to stamp such cigarettes and the possession of any unstamped cigarettes without the possession of the requisite amount or number of stamps shall be prima facie evidence that said cigarettes are possessed for the purpose of making a "first sale" thereof without stamps and without payment of the tax levied herein.

Every distributor in this State shall cause all cigarettes received by him to have the requisite denominations and amount of stamps affixed to represent the tax as levied herein; provided, however, that any distributor who has obtained from the Treasurer and has, in his possession the requisite amount and number of stamps necessary to stamp all cigarettes received by him may hold such cigarettes for a period of not longer than forty-eight (48) hours, excluding Sundays and legal holidays, before affixing the stamps as required herein.

Art. 7.11. Distributor, Bond. Any distributor or other person engaged in interstate business who shall, within thirty (30) days from the date this law becomes effective, execute and file with the Comptroller a good and sufficient surety bond signed by the distributor or other person and a good and sufficient surety company or companies authorized to do business in this State shall be permitted to set aside such part of his stock of cigarettes as may be necessary for the conduct of such interstate business without affixing the stamps required by this Act. Provided, that such bond shall be approved by and acceptable to the Comptroller in an amount of not less than Two Hundred and Fifty ($250.00) Dollars and not more than double an amount necessary to stamp the largest quantity of cigarettes set aside at any time for the conduct of such business, and any quantity so set aside which is larger than that permitted in said bond shall be subject to the same requirements as cigarettes purchased or possessed for intrastate sale. Said interstate stock shall be kept in an entirely separate part of the building, separate and apart from stamped stock. The amount of the bond required of such distributor or other person shall be fixed by the Comptroller, and subject to the minimum limitation herein provided; additional bond or a new bond shall be required by the Comptroller at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond or new bond shall be supplied within ten (10) days after demand. Provided, that said bond or bonds shall be payable to the State of Texas in Austin, Travis County, Texas, and conditioned for the full, complete and faithful performance of all the conditions and requirements of this Act affecting said distributor or other person on a form to be prescribed by the Comptroller, with the approval of the Attorney General. Should the distributor or other person fail or refuse to supply a new bond or additional bond within ten (10) days after demand, the Comptroller shall have the power and authority to cancel forthwith any existing bond made and executed by and for said distributor or other person. In the event said bond is cancelled, said distributor or other person shall within forty-eight (48) hours after said cancellation excluding Sundays and legal holidays, cause any and all cigarettes received prior to said cancellation to have the requisite denomination and amount of stamps affixed to represent the tax as herein provided. Cigarettes set aside for interstate business which are not kept entirely separate and apart from intrastate stock shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale."

Art. 7.12. Rules and Regulations. The Comptroller is hereby authorized to prescribe and promulgate rules and regulations not inconsistent with this Act for the purpose of regulating the sale of cigarettes for movement into States adjoining Texas when said cigarettes have the cigarette tax stamp of such adjoining State affixed thereto.

Art. 7.13. Records of Cigarettes. (1) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all cigarettes purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, waybills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said cigarettes, and in addition thereto a book record in a well-bound book which will provide complete information on all cigarettes purchased or received by said distrib-

utor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said cigarettes were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether registered mail, insured parcel post or open mail if received by mail, the number and kind of cigarettes received with stamps affixed thereto, and, if a distributor, the number and kind of cigarettes received without the stamps affixed, and an inventory or inventories on the first of each month, showing the number and kind of cigarettes on hand with stamps affixed thereto, and, if a distributor, the number and kind without stamps affixed.

Art. 7.14. Stamp Records, Sales Records (1) Every distributor shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General the invoice of stamps purchased or received from the Treasurer and in addition thereto a book record in a well bound book which will provide complete information of all stamps purchased from the Treasurer and the disposition thereof. Such record shall show the date of receipt of stamps purchased, the number or quantity of stamps, the denomination, and amount paid for stamps so purchased. Such record shall also show the number or quantity, the denomination and face value of stamps sold by requisition from the Comptroller with the name of purchaser of said requisitioned stamps, the number or quantity, the denomination and face value of stamps sent to or received from the Treasurer as an exchange and the inventory or inventories of all stamps on hand on the first day of each month, said inventory to show the number or quantity, demoniations and face value of said stamps.

(2) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of cigarettes, regardless of whether or not the tax is due upon said cigarettes under the provisions of this Chapter, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the number and kind of cigarettes sold, and if the sale is by a distributor, the number and kind of cigarettes with the stamps affixed to each individual package, and the number and kind of cigarettes without the stamps affixed thereto, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of such cigarettes. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided, however, that when the cigarettes are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further, that where a distributor or wholesale dealer sells cigarettes at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for cigarettes to be sold at retail and such stock of cigarettes invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well bound book or books of all cigarettes sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(3) Provided, that every person engaged in the business of selling cigarettes in interstate commerce only shall be required to keep such records and make such reports to the Comp-

troller as are required of a distributor.

(4) Salesmen in the employ of a manufacturer, and handling only the products of his employer, who engage in the business of selling or distributing cigarettes with stamps affixed in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said cigarettes.

(5) "Solicitors" engaged in the business of soliciting orders for cigarettes for shipment to points within this State shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for cigarettes for such shipments which record shall include the quantity and kind of cigarettes ordered or shipped, from whom ordered or by whom shipped, the full name and correct address of the purchaser; the date said cigarettes were ordered, and if available the date said cigarettes were shipped. Such record shall be kept for all cigarettes shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given credit for or furnished records of such orders or such shipments.

Art. 7.15. State to Have Preferred Lien.

All taxes, penalties, and cost of auditing, as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as distributor, which property shall include manufacturing plants, storage plants, warehouses, office building and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all cigarettes and stamps of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

Art. 7.16. Solicitor's Permit, Penalty.

(1) No individual shall offer for sale or solicit any order in this State for the sale of any cigarettes for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permittee to solicit orders for the sale of cigarettes and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor, and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar ($1), and the permit shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount set out above. Such permittee shall, on the fifth (5th) day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for cigarettes, said copies to show the quantity and kind of cigarettes ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said cigarettes were ordered and any other information

which may be required by the Comptroller; and the failure of such permittee to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

(2) If any person shall offer for sale or solicit any order in this State for the sale of cigarettes for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars.

Art. 7.17. Distributor's Report. Every distributor shall make and deliver to the Comptroller in Austin, Travis County, Texas, on the 10th day of each month a report for the preceding calendar month, which report shall be properly sworn to and executed by the distributor, or his representative in charge, and which shall show the date said report was executed, the name and address of said distributor, the month which the report covers, the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month, the number of unstamped and the number of stamped cigarettes purchased and received during the month, the number of unstamped and the number of stamped cigarettes returned from customers or received from any other source, the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory or disposed of in any other manner and the number of unstamped and the number of stamped cigarettes on hand at the end of the month. Said report shall show separately the number of cigarettes sold or distributed in intrastate commerce and the number sold or distributed in interstate commerce. Said report shall also show the number, denomination and face value of unused stamps on hand at the beginning of the month covered in the report, the number, denomination and face value of stamps purchased and received, the number, denomination and face value of stamps sold, used, lost, stolen, exchanged, returned to the Treasurer, or disposed of in any other manner and the number, denomination and face value of stamps on hand at the end of the month covered in the report. Provided, that said report shall also show separately all drop-shipments handled by or through said distributor during the period reported, which information shall include the date of shipment, the invoice number, the name and address of the consignee, the number and brand of such cigarettes and the means of delivery and a copy or copies of all invoices of such drop-shipments shall be attached to and sent with said report. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up in said report but the failure of any distributor to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein.

Art. 7.18. Suit for Tax. Evidence. (1) If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the number of cigarettes sold by such distributor or his representatives, upon which such tax, penalty, and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing section, and attach or file as an exhibit any report or audit to said distributor,

and an affidavit made by the Comptroller or his representatives that the taxes shown to be due by said report or audit are unpaid, that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas, of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

Art. 7.19. Venue. Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Act shall be in a Court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

Art. 7.20. Availability of Records. Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller, after the stocks are delivered from said vending machine, train, automobile, or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

Art. 7.21. Forfeiture or Suspension of Permits. If any distributor, wholesale dealer or retail dealer has violated any provision of this Act, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from the date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to anyone whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no cigarettes shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed.

Art. 7.22. Allocation of Revenues. The funds derived from the issuance and sale of the permits to distributors wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from sale of stamps.

Art. 7.23. Application for Permits, Issuance, Records, Reports.

(1) Every distributing agent in this State now engaged, or who desires to become engaged in the business of storing unstamped cigarettes previously sold in interstate commerce and received in interstate commerce for distribution or delivery only upon order received from without the State, shall within thirty (30) days from the date this law becomes effective, file with the Comptroller, an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars ($100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year but may be renewed upon like application and upon payment of another fee in the amount set out above. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(2) Upon receipt of the application

and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated a non-assignable, consecutively numbered permit, authorizing the storing and distribution of unstamped cigarettes within this State when such distribution is made upon interstate orders only.

(3) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all cigarettes received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said cigarettes, or copies thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering distribution or delivery of said cigarettes.

(4) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sunday and holidays, all deliveries of cigarettes made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, the name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the number and kind of cigarettes delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

(5) Permits required by Articles 7.09, 7.16 or 7.23 of this Chapter issued after the effective date of this Chapter shall expire the last day of February following issuance. From the effective date of this Chapter the Comptroller shall prorate the fees for new or renewal permits required by Articles 7.09 or 7.23 of this Chapter by allowing a discount computed by quarters of the licensing year. The licensing year shall be from and shall include the first day of March through the last day of February of each year.

(6) Each permit holder required to obtain a permit under Articles 7.09, 7.16 or 7.23 of this Chapter who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay, in addition to the permit fee, a late application fee of One Dollar ($1.00), which shall be paid to the Comptroller at the time the permit fee is paid.

(7) When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Chapter the permit holder shall pay a service fee of Five Dollars ($5.00) in addition to the permit fee.

(8) In cases where any permit expires within three (3) months from the date of issuance or renewal because of the end of the licensing year, the Comptroller may with the consent of the permit holder collect both the discounted permit fee or permit fee for a current permit plus a permit fee for the entire licensing year following, and issue a permit or permits for both periods.

Art. 7.24. Penalties.

If any distributor, wholesale dealer, retail dealer, or distributing agent shall (a) fail to keep any of the records required to be kept by the provisions of this Chapter, or (b) if any distributor, wholesale dealer or retail dealer shall sell any cigarettes upon which a tax is required to be paid by this Chapter without at the time having a valid permit, or (c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or (d) make a false or incomplete report to said Comptroller, or (e) if any distributing agent shall store any unstamped cigarettes in the State or distribute or deliver any unstamped cigarettes within this State without at the time of said storage or delivery having a

valid permit, or (f) if any person affected by this Chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court having jurisdiction.

Art. 7.25. Information Confidential.

All information derived or obtained by the Attorney General or the Comptroller from any such inspection of the books and records as is authorized in this Chapter, and all information secured, derived or obtained by the Attorney General or the Comptroller from any record, report, instrument, or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential; and no record, report, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter shall be open to public inspection, and all such information, records, reports, instruments and copies thereof shall be used by the Attorney General and the Comptroller solely for the purpose of enforcing the provisions of this Chapter.

Art. 7.26. Penalty for Disclosure of Records.

Any employee of the Attorney General or of the Comptroller who (a) gives to any person, firm or corporation, any information secured, derived or obtained from the inspection or examination of books or records authorized under the terms of this Chapter or from the records, reports, instruments and/or copies thereof, required to be furnished under the terms of this Chapter, or (b) permits the inspection by any person, firm or corporation, of any of the reports, records, instruments, or copies thereof required to be furnished under the terms of this Chapter, or (c) gives a copy or copies of any such records, reports, instruments, or copy thereof required to be furnished under the terms of this Chapter to any person, firm or corporation, or (d) gives any information to any person, firm or corporation concerning the records of all or any parts of the reports, records, instruments, or copies thereof required to be furnished under the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by confinement in the County Jail for not more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500), or by both such fine and imprisonment; provided, however, that it shall not be an offense under the terms of this Chapter for an employee of the Attorney General or of the Comptroller to furnish any such information as is hereinabove described to any other employee of the Attorney General or of the Comptroller where such information is furnished or given for use in the enforcement of this Chapter.

Art. 7.27. Inspection.

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in cigarettes, or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the cigarette business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in cigarettes. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stock of cigarettes and cigarette stamps, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

Art. 7.28. Record of Carriers.

Every common and contract carrier

transporting cigarettes in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all cigarettes so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the number or quantity of cigarettes transported or handled. Such records together with all other books or records which may be in the custody of said carriers showing the shipment of cigarettes shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all cigarettes in the custody of such carrier.

Art. 7.29. Unstamped Cigarettes.

(1) Except as herein provided, it shall be unlawful for any person to have in his possession for sale, distribution or use, or for any other purpose, cigarettes upon which a tax is required to be paid by this Chapter, without having affixed to each individual package of cigarettes the proper stamp evidencing the payment of such tax and the absence of said stamp on said individual package of cigarettes shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the non-payment of said tax.

(2) No person, other than a common carrier, shall transport within this State cigarettes, upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

(3) No person shall use, sell, offer for sale or possess for the purpose of use or sale, within this State, any previously used stamp or stamps or attach any such previously used stamp to an individual package of cigarettes.

(4) No person shall, except as otherwise provided, purchase stamps from any person other than the Treasurer or sell stamps purchased from said Treasurer or sell or distribute cigarettes in this State without stamps affixed to each individual package regardless of whether such sale or distribution constitutes a first sale or otherwise.

(5) No person shall knowingly use, consume or smoke, within this State, cigarettes upon which a tax is required to be paid without said tax having been paid.

(6) No person shall use any artful device or deceptive practice to conceal any violation of this Act or mislead the Comptroller in the enforcement of this Chapter.

Art. 7.30. Seizure.

(1) All cigarettes on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Cigarette Tax Law, and all cigarettes which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such cigarettes for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purpose, found in the place, building or vehicle where such cigarettes are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such cigarettes, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

(2) The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken,

and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

(3) The Attorney General, or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceedings is a non-resident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing statutes for service of citation upon non-residents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing statutes in cases of attorneys appointed to represent non-residents and unknown defendants.

(4) In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury and shall be allocated as the Cigarette Tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars ($15) shall be paid to such officers in addition to all other fees allowed by law under the Maximum Fee Bill, which fee shall be collected as Court costs out of the proceeds of such sale.

Art. 7.31. Sale by Comptroller.

In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the cigarettes and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars ($500), or less, by the following summary proceedings:

(1) The Comptroller shall publish a notice in some newspaper of the County where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars ($250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the Court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and, after deducting expense of seizure, appraisement, cus-

tody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Cigarette Tax levied hereunder is apportioned.

In the event the cigarettes seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be unstamped, the officers selling the same shall, upon sale thereof, affix or cause to be affixed, the stamps so required and deduct the expenses thereof from the proceeds of such sale.

Art. 7.32. Seizure or sale no defense.

The seizure, forfeiture and sale of cigarettes and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this law or from liability to pay penalties provided by this law, with or without suit therefor.

Art. 7.33. Waiver permitted; penalty.

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall first affix to each of the individual packages of cigarettes seized the amount and value of the stamps necessary to represent the tax, and in addition to the stamps required, pay into the State Treasury through the Comptroller a sum equal to the value of the stamps required to be affixed to such cigarettes. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

If upon examination of invoices or other investigation the Comptroller finds that cigarettes have been sold without stamps affixed as required in this Chapter he shall have the power to require of such persons, to pay into the State Treasury through him a sum equal to twice the amount of the stamp tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of sufficient stamp purchases to cover unstamped cigarettes purchased by him, the prima facie presumption shall arise that such cigarettes were sold without the proper stamps affixed thereto.

Art. 7.34. Disposition of money.

All moneys collected by the Comptroller under the provisions of Art. 7.33 of this Chapter, after payment of all costs and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited.

Art. 7.35. Duties of Comptroller, rules and regulations.

(1) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State, or of the United States, for the enforcement of the provisions of this Chapter and the collection of revenues hereunder.

(2) The Treasurer may promulgate rules and regulations hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

(3) The Treasurer shall promulgate rules and regulations providing for the exchange, or replacement without cost, of new stamps for any stamps affixed to any package of cigarettes which cigarettes have become unfit for use or consumption, or unsalable, and which cigarettes have been destroyed or returned to the manufacturer, upon proof satisfactory to the Treasurer that such cigarettes have become unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer.

Art. 7.36. Penalties.

Whoever shall make a first sale of any cigarettes without a stamp being then and there affixed to each individual package, or (b) whoever shall sell, offer for sale, or present as a prize or gift any cigarettes without a stamp being then and there affixed to each individual package, or (c) whoever shall sell cigarettes in any quantities less than individual package, or (d) whoever shall knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed

upon each individual package, or (e) whoever possesses in violation of any provisions of this Chapter cigarettes, upon which a tax is required to be paid, in quantities of less than ten thousand (10,000) cigarettes, or (f) whoever shall knowingly cancel or mutilate any stamp affixed to an individual package of cigarettes for the purpose of concealing any violation of this Chapter, or with other fraudulent intent, or (g) whoever shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (h) whoever shall mislead the Comptroller in the enforcement of this Chapter, or (i) whoever shall refuse to surrender to the Comptroller upon demand any cigarettes possessed in violation of any provision of this Chapter, or (j) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any cigarettes without at the time of said first sale having a valid permit, or (k) make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or (l) whoever as distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of cigarettes, or (m) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell cigarettes without at the time of said sale having a valid permit, or (n) sell cigarettes without at the time of said sale having a permit posted so as to be easily seen by the public, or (o) whoever as distributing agent shall store or distribute unstamped cigarettes without at the time of said storage or distribution having a valid distributing agent's permit shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five ($25) Dollars nor more than Two Hundred ($200) Dollars.

Art. 7.37. Penalties.

Whoever shall knowingly transport any cigarettes in quantities of more than forty (40) cigarettes without a stamp being then and there affixed to each individual package, or (b) while transporting cigarettes shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises, where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall use, sell, offer for sale or possess for the purpose of use or sale, any previously used stamps, or (f) attach or cause to be attached to any individual package of cigarettes any previously used stamps, or (g) use or consent to the use of any previously used stamps in connection with the sale or offering for sale of any cigarettes, or (h) whoever shall purchase stamps from any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said purchase, or (i) whoever shall sell any lawfully issued stamps to any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said sale, or (j) whoever shall possess in violation of any provision of this Act cigarettes upon which a tax is required to be paid in quantities of ten thousand (10,000) or more cigarettes, or (k) whoever as distributor or distributing agent, or as the agent, employee or representative of a distributor or a distributing agent shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (l) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Act to be made, or (m) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books and records required herein to be kept, or (n) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the cigarette business that may be kept, or (o) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Act to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (p) shall fail to keep for a period of two (2) years in Texas any books and records required

herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed in Article 7.36 of this Chapter overlap as to offenses which are also punishable under Article 7.37 of this Chapter, then the penalties prescribed by this Article shall apply and control all other penalties.

Venue of a prosecution under Articles 7.36 or 7.37 shall be in Travis County, Texas, or in the county in Texas where the offense occurred.

Art. 7.38. Counterfeit Stamps.

Any person who shall print, engrave, make, issue, sell or circulate, or who shall possess or have in his possession, with intent to use, sell, circulate or pass, any counterfeit stamp, or who shall use, or consent to the use of, any counterfeit stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place or cause to be placed, on any individual package of cigarettes, any counterfeit stamp, shall be guilty of a felony and upon conviction shall be punished by confinement in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

Venue of a prosecution under this Article shall be in Travis County, Texas.

Art. 7.39. Enforcement Fund.

Two and one-half per cent (2½%) of three fourths (¾) of the gross revenue derived from the tax levied by this Chapter shall be set aside in a special fund subject to the use of the Comptroller to be expended in the administration and enforcement of the provisions of this Act and so much of the proceeds of two and one-half per cent (2½%) of three-fourths (¾) of said tax and funds shall be and the same is hereby appropriated to the Comptroller for said purposes and same shall be paid monthly as needed.

Payment for the manufacturing or printing of the cigarette tax stamps and for any expenses incurred by the Board incident thereto shall be made from the revenue derived from the cigarette tax before such fund is allocated under the provisions of this Chapter and as much of said funds as may be necessary is hereby appropriated for such purpose; any unexpended portion of said funds so specified shall at the end of each biennium be paid in the proper proportion to the funds to which the cigarette tax fund shall be apportioned.

Art. 7.40. Supervision of Stamp Procurement.

The director of the Cigarette Tax Division shall, in addition to the duties of supervising and directing the administration and enforcement of this provision of this Chapter, personally supervise the printing and manufacturing of all cigarette tax stamps under the contract as awarded by the Board of Control and he shall have possession and custody of, and be responsible for, all specification plans, photographs, impressions, drawings, electroplates, printing stones and any and all other property or equipment that may provide a means of reproducing, manufacturing or printing of cigarette tax stamps in the design selected by the Cigarette Tax Stamp Board. The said Director shall also be charged with the responsibility of inspecting the stamps after such stamps have been manufactured or printed and all sheets of stamps that do not meet the specifications required in the contract shall be rejected and destroyed by or under the direct personal supervision of said Director; and the Director shall have control of said stamps and be responsible therefor until delivery is made to the Treasurer.

Art. 7.41. Nature of Tax.

The tax herein levied is intended by the Legislature to be an excise or use tax and not an occupation tax, but in the event that any court of competent jurisdiction shall declare the tax levied herein to be an occupation tax, it is hereby specifically declared to be the intention of the Legislature that such holding shall not affect the validity of the remaining provisions of this Chapter, and in that event, one-fourth (¼) of the net revenue derived from the tax levied herein shall be allocated to the Available School Fund and three-fourths (¾) shall be allocated to the Clearance Fund established by House Bill No. 8, Acts Forty-seventh Legislature,

Regular Session, 1941, page 269, Chapter 184, as amended.

CHAPTER 8
CIGARS AND TOBACCO PRODUCTS TAX

Article 8.01. Definitions.

Whenever used in this Chapter:

(a) The word "Person" shall mean any individual, company, corporation, partnership, association, joint adventure, estate, trust or any other group or combination acting as a unit, and the plural, as well as the singular, unless the intention to give a more limited meaning is disclosed by the context.

(b) The word "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Distributor" shall mean any and each of the following:

(1) Any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State from without the State any tobacco products for sale, use or consumption.

(2) Any person who makes, manufactures, or fabricates tobacco products in this State for sale, use, or consumption in this State.

(d) The word "Wholesaler" as used herein shall include dealers whose principal business is that of a wholesale dealer or jobber and who is known to the trade as such, who shall sell any cigars or tobacco products to licensed retail dealers only for the purpose of resale or giving it away, or exposing the same where it may be taken or purchased or otherwise acquired by the retailer.

(e) The word "Retailer" as used herein shall include every dealer other than the wholesale dealer as defined above whose principal business is that of selling merchandise at retail, who shall sell or offer for sale cigars or tobacco products, irrespective of quantity or number of sales, giving the same away or exposing the same where it may be taken or purchased or otherwise acquired by the consumer.

(f) "Solicitor" shall mean any person representing a licensed non-resident supplier who shall solicit or take orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this State.

(g) The word "consumer" shall mean a person who comes into possession of tobacco products for the purpose of consuming them, giving them away, or disposing of them in any other way.

(h) The words "First Sale" shall mean and include the first sale or distribution of cigars or tobacco products in intrastate commerce in the State of Texas or the first use or consumption of cigars or tobacco products within this State.

(i) The words "Tobacco Products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug-cut, crimp-cut, ready-rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including Cavendish, Twist, plug, scrap and any other kind and form of tobacco suitable for chewing, however prepared); and shall include any other articles or products made of tobacco or any substitute therefor, but shall not include snuff or cigarettes.

(j) The term "Distributing Agent" shall mean and include every person in this State who acts as an agent of any person outside the State by receiving cigars and tobacco products in interstate commerce and storing such items subject to distribution or delivery upon order from said person outside the State to distributors, wholesale dealers, and retail dealers, or to consumers within the State of Texas.

(k) The term "Drop Shipment" shall mean and include any delivery of cigars or tobacco products received by any person within this State when payment for such cigars or tobacco products is made to the shipper or seller, buyer, or through a person other than the consignee.

(l) The term "Cigar," as used herein, shall mean any roll of fermented tobacco wrapped in tobacco in any form. The main stream of smoke given off by a cigar shall be of alkaline reaction to litmus paper; and the main stream of smoke of a cigarette shall be of acid reaction to litmus paper.

(m) The word "Dealer" shall include every person, firm, corporation, or association of persons who manufacture cigars or tobacco products for distribution, sale or use or consumption in the State of Texas. The word "Dealer" is also further defined as meaning any person, firm, corporation, or association of persons who imports cigars or tobacco products from any State or foreign country for distribution, sale, use, or consumption in the State of Texas.

(n) The word "Board" or "Board of Control" shall mean the Board of Control of the State of Texas.

(o) The word "Treasurer" shall mean the Treasurer of the State of Texas.

(p) The term "Retail Price" shall mean the price paid by the consumer for individual cigars or other tobacco products and shall be construed to mean the retail or selling price before adding the amount of the tax and shall be construed to mean the ordinary retail price.

Art. 8.02. Tax Levy and Rate.

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per thousand, one cent (1¢) for each ten (10) cigars or fraction thereof.

(b) Upon cigars of all description weighing more than three (3) pounds per thousand retailing for not more than 3.3¢ cents each, Seven Dollars and Fifty Cents ($7.50) per thousand.

(c) Upon cigars of all description weighing more than three (3) pounds per thousand retailing for over 3.3¢ cents each, Fifteen Dollars ($15) per thousand.

(d) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five per cent (25%) of the factory list price, exclusive of an trade discount, special discount, or deals.

Art. 8.03. Tax on "first sale."

The tax levied herein shall be paid only once to the State Treasurer by the person making the "first sale" in this State. No person, however, shall be required to pay a tax on cigars or tobacco products brought into this State on or about his person in quantities or amounts which would ordinarily retail at twenty-five (25¢) cents or less when such cigars or tobacco products are actually used by said person and not sold or offered for sale in this State.

Art. 8.04. Report to be filed with Comptroller.

On or before the tenth (10th) day of each calendar month every distributor shall file with the Comptroller in Austin, Travis County, Texas, on a form prescribed by the Comptroller, a report covering the preceding month which shall show such information as the Comptroller may require of cigars and tobacco products handled by said distributor during the preceding month including all such products purchased, received, acquired or ordered, all such products sold, distributed, used, lost or otherwise disposed of, all such products on hand at the beginning and end of said month, and such other information pertinent to cigars and tobacco products handled and the taxes due on said products as the Comptroller may require.

The distributor shall, at the time of making said report, pay to the State of Texas at the office of the Comptroller the taxes levied herein upon all cigars and tobacco products sold, used or otherwise disposed of by him during the preceding month, which said tax payment shall be in legal tender or in proper form of money order or exchange made payable to the State Treasurer.

Art. 8.05. Records Required.

(a) Every distributor, wholesale dealer and retail dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer, including all invoices, bills of lading, way bills, freight bills, express receipts or copies thereof and all other shipping records furnished by the carrier and the seller or shipper of said tobacco products and in addition thereto a book record in a well-bound book which will provide complete information of all tobacco products purchased or received by said distributor, wholesale dealer or retail dealer at each place of business. Such book record shall show the date said tobacco products were received, with the designation of whether drop-shipment or otherwise, the name and address of the person from whom purchased and from whom received, the point from which shipped or delivered, the point at which received, the name of the carrier, if shipped by common carrier, the name of the boat or barge if shipped by water, whether

registered mail, insured parcel post or open mail if received by mail, the number and kind of tobacco products received on which tax has been paid, and, if a distributor, the number and kind of tobacco products received on which tax has been paid, and an inventory or inventories on the first of each month, showing the number and kind of tobacco products on hand on which tax has been paid.

(b) Every distributor and wholesale dealer shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General a complete record of each and every sale, distribution or use of tobacco products regardless of whether or not the tax is due upon said tobacco products under the provisions of this Chapter, upon an invoice to be furnished by said distributor or wholesale dealer which invoice shall be issued in duplicate except when the sale or distribution is made by drop-shipment in which event the invoice shall be issued in triplicate, said invoice shall show the date of sale, distribution or use, the purchaser and his address, the means of delivery, the name of the carrier if delivered by common carrier, whether registered mail, insured parcel post or open mail if delivered through the mail, the designation of drop-shipment if the sale is a drop-shipment made by a distributor, the quantity and kind of tobacco products sold, and if the sale is by a distributor the number and kind of tobacco products upon which required tax has been paid, and in addition thereto, the said invoices shall be supported by the receipts and other records furnished by the carrier of tobacco products. The original of said invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer as the case may be; provided however, that when tobacco products are distributed or exchanged in any manner where no sale is involved that an explanation of such transaction shall be stated on said invoice. Provided further that where a distributor or wholesale dealer sells tobacco products at retail it will be sufficient for said distributor or wholesale dealer and he shall be required to issue an invoice to his retail department for tobacco products to be sold at retail and such stock of tobacco products invoiced for retail sales shall be kept separate and apart from the other stock of said distributor or wholesale dealer; provided, further, that every distributor and wholesale dealer shall keep at each place of business in Texas for a period of two (2) years for the inspection at all times by the authorized authorities a book record in a well-bound book or books of all tobacco products sold, distributed or used by said distributor or wholesale dealer. Such book record shall include all information required to be kept on the invoice aforesaid.

(c) Provided, that every person engaged in the business of selling tobacco products in interstate commerce only shall be required to keep such records and make such reports to the Comptroller as are required of a distributor.

(d) A salesman in the employ of a manufacturer, and handling only the products of his employer, who engage in the business of selling or distributing tobacco products on which tax has been paid in this State for the purpose of resale, shall be required to keep the same records, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, as are required of a wholesale dealer. Such salesmen shall also be required to deliver the original of the invoice required to be made to the purchaser or recipient of said tobacco products.

(e) 'Solicitors' engaged in the business of soliciting orders for tobacco products for shipment to points within this State shall keep in Texas for a period of two (2) years for inspection at all times of the Comptroller and the Attorney General a complete record of all orders solicited and all orders taken for tobacco products for such shipments which record shall include the quantity and kind of tobacco products ordered or shipped, from whom ordered or shipped, the full name and correct address of the purchaser, the date said tobacco products were ordered, and if available, the date said tobacco products were shipped. Such record shall be kept for all tobacco products shipped to points within this State by the vendor whom the solicitor represents whether the order was taken by said solicitor or otherwise if said solicitor is given

credit for or furnished records of such orders or such shipments.

All invoices, bills of lading, freight bills, way bills, express receipts, requisitions, and copies of orders required to be kept by the provisions of this Chapter, shall be kept separate and distinct from any records of other merchandise handled by the person required to keep such records.

Art. 8.06. Sale of Permits and Fees.

(a) Every distributor, wholesale dealer and retail dealer in this State now engaged or who desires to become engaged, in the sale or use of tobacco products upon which a tax is required to be paid, shall, within thirty (30) days from the date this law becomes effective, file with the Comptroller an application for a permit as a distributor, wholesale dealer or retail dealer, as the case may be, said application to be accompanied by a fee of Twenty-five Dollars ($25) if for a distributor's permit, or a fee of Fifteen Dollars ($15) if for a wholesale dealers permit, or a fee of Five Dollars ($5) if for a retail dealers permit. Said application shall be on forms prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said forms shall set forth: (a) the manner under which such distributor, wholesale dealer or retail dealer transacts or intends to transact such business as distributor, wholesale dealer or retail dealer; (b) the principal office, residence and place of business in Texas for which the permit is to apply; (c) and if other than an individual, the principal officers or members thereof not to exceed three (3), and their addresses. The Comptroller may require any other information as he may desire in said applications. No distributor, wholesale dealer or retail dealer shall sell any tobacco products until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained. Said permits shall expire on the last day of February of each year, but may be renewed upon like application and upon payment of another fee in the amount prescribed for the kind of permit desired. An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesale dealer or retail dealer. Provided, however, that the Comptroller may issue a joint permit as a distributor, wholesale dealer, retail dealer, or distributing agent for both cigarettes and tobacco products, in which case only one permit fee shall be paid by the permit holder. Provided, further, that any distributor manufacturing, importing, or acquiring in any other manner, tobacco products for his own personal use or consumption and not to be disposed of by sale, gift, or otherwise shall not be required to obtain a distributor's permit but shall be required to make the report required herein of a distributor and to comply with all other provisions of this Act affecting a distributor, provided further, that the Comptroller shall be authorized to accept any tax from any distributor acquiring tobacco products for his own personal use or consumption and not for sale or other disposal.

(b) Upon receipt of the application and fee herein provided for, the Comptroller shall issue to every distributor, wholesale dealer or retail dealer for the place of business designated, a non-assignable consecutively numbered permit, designating the kind of permit and authorizing the sale of tobacco products in this State. Said permit shall provide that the same is revocable and shall be forfeited or suspended upon any violation of any provision of this Chapter or any reasonable rule or regulation adopted by the Comptroller. If such permit is revoked or suspended said distributor, wholesale dealer or retail dealer shall not sell any tobacco products from such place of business until a new permit is granted or the suspension of the old permit removed.

Application for permit should be accompanied by remittance in cash, postal or express money order, or Austin exchange for the required amount. Any permit issued in exchange for a "personal" check will be conditioned upon final payment of such "personal" check, and may be revoked and cancelled by the State Comptroller after five (5) days notice to the dealer that payment of his check has been refused by the bank upon which drawn. No dealer shall make any sale or distribution of tobacco products after such revocation. Upon receipt of the necessary funds to redeem such dishonored check the

State Comptroller may remove the suspension of the permit at his discretion. The permit when revoked shall be subject to recall and seizure by the State Comptroller.

The permit shall at all times be publicly displayed by the distributor, wholesale dealer or retail dealer at his place of business so as to be easily seen by the public and the persons authorized to inspect the same. Provided, further, that any person who operates both as a distributor and wholesale dealer in the same place of business shall only be required to obtain a distributor's permit for the particular place of business where such operation of said business is conducted, but if any distributor or wholesale dealer sells tobacco products at both wholesale and retail, an additional permit as a retail dealer shall be required. Any unexpired permit may be returned to the Comptroller for credit on the unexpired portion thereof only upon the purchase of a permit of a higher classification.

If the application is for a permit to sell tobacco products from or by means of a tobacco products vending machine, train, automobile, airplane, boat or other vehicle, the serial number of said vending machine, the make, motor number and State Highway license number of said automobile or other vehicle and the name of the railway company and number of said train, the name of the airplane, the name of the boat, shall be shown on the application.

Permits shall be displayed on each tobacco products vending machine in a place easy to be seen by the public and officials authorized to inspect them. Such permits shall not be folded in a manner that will cover any of the information thereon. Permits assigned to trains shall be posted in the car where tobacco products are displayed or offered for sale. Permits assigned to automobiles or trucks shall be posted in a conspicuous place in the cab or driver's seat of such vehicle.

Art. 8.07. Solicitor's Permit and Fee.

No individual shall offer for sale or solicit any order in this State for the sale of any tobacco products for shipment to points within this State, for his own account or for the account of any person, firm, association or corporation, unless and until such person or individual shall have first filed an application for and obtained from the State Comptroller a solicitor's permit. Such permit shall authorize the permit holder to solicit orders for the sale of tobacco products and shall set forth the name and address of the vendor and/or employers whom the solicitor represents, and such solicitor shall not represent any vendor, and/or employers whose name does not appear upon such permit. The fee for such permit shall be One Dollar ($1.00) per year or part thereof, and the permit shall expire on the last day of February, but may be renewed upon like application and upon payment of another fee in the amount prescribed. Such permit holder shall, on the fifth (5th) day of each month, file with the Comptroller, on proper forms to be supplied him by said official, copies of all orders solicited by him in the State during the preceding calendar month for tobacco products, said copies to show the quantity and kind of tobacco products ordered, by whom ordered, from what person, firm or corporation ordered, the full name and correct address of purchaser, the date said tobacco products were ordered and any other information which may be required by the Comptroller; and the failure of such permit holder to comply with the provisions hereof shall subject him to the forfeiture of his permit, after five (5) days notice and opportunity to be heard by the Comptroller of Public Accounts. No new permit shall be issued for a period of one (1) year to anyone whose permit has been forfeited, except in the discretion of the Comptroller.

If any person shall offer for sale or solicit any order in this State for the sale of tobacco products for shipment to a point within the State, without then and there having a valid solicitor's permit, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Dollars ($200.00).

Art. 8.08. Bonds.

(a) Every distributor who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the first sale of cigars and tobacco products or of taxes incurred upon the use of cigars and tobacco

products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three (3) times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars ($1,000). Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from its effective date for a period of one (1) year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Chapter or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding year by a renewal certificate acceptable to the Comptroller which said renewal certificate, when and if issued, shall have all the force and effect of an original bond.

(b) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one (1) month if, in his opinion, an existing bond has become insufficient. If any distributor licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(c) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of the University of Texas may be legally invested. Such cash or securities shall be released within sixty (60) days after the cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller. The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover any taxes, costs, penalties, and interest found to be due said State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed. Provided, suit may be filed against any surety or sureties on any bond furnished by a distributor, without resorting to or exhausting the assets of such distributor or without making said distributor, as principal obligor to said bond, a party to said suit.

Art. 8.09. State to Have Preferred Lien.

All taxes, penalties, and cost of auditing as hereinafter provided, due, or that might become due by any distributor to the State shall be and become a preferred lien, first and prior to any and all other existing liens,

contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include manufacturing plants, storage plants, warehouses, office buildings and equipment, trucks, cars or other motor vehicles or any other equipment devoted to such use and each tract of land on which such manufacturing plant, storage plant, warehouse, office building or other property is located, and other tangible property which is used in carrying on such business and in addition thereto any and all tobacco products of said distributor. If any distributor shall fail to pay any taxes and penalties due the State in the proper manner provided for such payment the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly paid the distributor shall pay the reasonable expenses incurred in such investigation and audit as additional penalty. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits, shall be placed in a special fund in the State Treasury, which shall be used until exhausted, for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

Art. 8.10. Suit for Tax, Evidence.

If any distributor or other person fails or refuses to pay any tax, penalties and cost of audit herein provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said tax claims, in any judicial proceedings, any report filed with the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the quantity of tobacco products sold by such distributor or his representatives, upon which such tax penalty, and cost of audit has not been paid, or any audit made by the Comptroller or his representative from the books or records of said distributor, or other person when signed and sworn to by such representative as being made from the records of said distributor or persons from whom such distributor has bought, received, or delivered tobacco products, whether from a transportation company or otherwise, such report or audit, shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

Art. 8.11. Venue.

Venue of any civil suit, writ of injunction or other civil proceedings filed under the provisions of this Chapter shall be in a Court of competent jurisdiction in Travis County, Texas, or in the county where the defendant in such proceedings has his domicile.

Art. 8.12. Availability of Records.

Provided that if the place of business of any distributor, wholesale dealer or retail dealer is a vending machine, train, automobile, boat, or airplane, or other vehicle, such distributor, wholesale dealer or retail dealer, as the case may be, shall be required to designate in the application a permanent place where the records required to be kept for such place of business will be available to the Comptroller after the stocks are delivered from said vending machine, train, automobile or other vehicle and after such deliveries are made the records shall be kept at the permanent place so designated.

All tobacco products vending machine operators shall keep, at the place designated in the application to be the permanent place where records will be kept, a complete record of all tobacco products vending machines possessed, showing date each tobacco products vending machine was received from the seller, serial number of each tobacco products vending machine, present location of each tobacco products vending machine, date each tobacco products vending machine was placed on location, current permit number of each tobacco products vending machine, and date of expiration of each permit. If the tobacco products vending machine is sold or disposed of give name and address of the recipient of the tobacco products vending machine.

Provided that if a vending machine from which tobacco products are to be sold, has a valid cigarette dealer's permit, it will not be required for the vendor to apply for an additional permit for vending tobacco products. It will be necessary for this record to be shown in the requirements as described herein.

Art. 8.13. Vending Machines.

It is expressly provided that no occupation tax shall be collected from any person vending tobacco products by means of a vending machine for the privilege of selling tobacco products only by means of such machines other than the permit fee herein imposed for each machine.

Art. 8.14. Forfeiture or Suspension of Permits.

If any distributor, wholesale dealer or retail dealer has violated any provision of this Chapter, or any rule and regulation promulgated hereunder, the Comptroller shall have the power and authority to forfeit or suspend the permit or permits of said distributor, wholesale dealer or retail dealer by giving written notice stating the reason justifying such forfeiture or suspension and the same shall be forfeited or suspended five (5) days from date of said notice. Any notice required to be given by the Comptroller may be mailed to the distributor, wholesale dealer or the retail dealer, as the case may be, at any place designated as the place of business on the application for permit required herein. No new permit shall be issued within a period of one (1) year to any one whose permit or permits have been forfeited, except at the discretion of the Comptroller. If any permit is forfeited or suspended no tobacco products shall be sold from the place of business for which said permit applied until a new permit is granted or the suspension of the old permit removed.

Art. 8.15. Allocation of Revenues.

The funds derived from the issuance and sale of the permits to distributors, wholesale and retail dealers as herein provided shall be delivered to the Treasurer, and allocated in the same manner and in the same proportion as the funds derived from payment of tax.

Art. 8.16. Application for Permit, Issuance, Records, Reports.

(a) Every distributing agent in this State now engaged or who desires to become engaged in the business of storing non-tax paid tobacco products previously sold in interstate commerce and received in interstate commerce for distribution on delivery only upon order received from without the State, shall within thirty (30) days from the effective date of this Chapter, file with the Comptroller an application for a distributing agent's permit, on a form prescribed by the Comptroller to be furnished upon written request, the failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Texas for which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The Comptroller may require any other information he may desire in said application. No distributing agent shall engage in such business until such application has been filed and the fee of One Hundred Dollars ($100) paid for the permit and until the permit has been obtained. Said permit shall expire on the last day of February of each year. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

(b) Upon receipt of the application and permit fee herein provided for, the Comptroller shall issue to every distributing agent, for the place of business designated, a non-assignable, consecutively numbered permit authorizing the storing and distribution of non-tax paid tobacco products within this State when such distribution is made upon interstate orders only. Permits shall be renewable at the expiration thereof upon the payment of another fee in the amount prescribed.

(c) Every distributing agent shall keep at each place of business in Texas, except as otherwise provided, for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General, a complete record of all tobacco products received by him, including all orders, invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records which are furnished to said distributing agent by the carrier and the shipper of said tobacco products, or copies, thereof, and in addition thereto, a complete record of each and every distribution or delivery made by said distributing agent, such records of a distribution or delivery shall include all orders, invoices or copies thereof, and all other shipping records furnished by the carrier and the person ordering dis-

tribution or delivery of said tobacco products.

(d) Every distributing agent in Texas shall report to the Comptroller, on a form to be prescribed by the Comptroller and furnished by the distributing agent, each day excepting Sundays and holidays, all deliveries of tobacco products made by him on the preceding day or days. The report shall show the name of the person ordering the delivery, the date of delivery, and name and address of the person to whom delivered, the invoice number, the bill of lading or way bill number, the quantity and kind of tobacco products delivered, the means of delivery and/or the transportation agent and the designation of drop-shipment, if a drop-shipment; provided, however, if the invoice furnished said distributing agent by the manufacturer or other person ordering such delivery, or the bill of lading prepared by said distributing agent to cover the shipment under said invoice, contains all the information required to be reported, it will be sufficient to send a copy of said invoice or invoices, or a copy of said bill of lading, or bills of lading, to the Comptroller daily.

Art. 8.17. Penalties.

If any distributor, wholesale dealer, retail dealer or distributing agent shall (a) fail to keep any of the records required to be kept by the provisions of this Chapter, or (b) if any distributor, wholesale dealer or retail dealer shall sell any tobacco products upon which a tax is required to be paid by this Chapter without at the time having a valid permit, or (c) if any distributor, wholesale dealer or distributing agent shall fail to make any reports to the Comptroller required herein to be made, or (d) make a false or incomplete report to said Comptroller, or (e) if any distributing agent shall store any tobacco products, on which the tax has not been paid, in the State or distribute or deliver any tobacco products on which the tax has not been paid, within this State without at the time of said storage or delivery having a valid permit, or (f) if any person affected by this Chapter shall fail or refuse to abide by the provisions hereof or the rules and regulations promulgated hereunder, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which if not paid shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or in any other Court having jurisdiction.

Art. 8.18. Inspection.

For the purpose of enabling the Comptroller to determine the tax liability of a distributor, wholesale dealer, retail dealer, distributing agent or any other person dealing in tobacco products or to determine whether a tax liability has been incurred, he shall have the right to inspect any premises where tobacco products are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange and to examine all of the records required herein to be kept or any other records that may be kept incident to the conduct of the tobacco products business of said distributor, wholesale dealer, retail dealer, distributing agent, or other person dealing in tobacco products. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of tobacco products, and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred, and it shall be unlawful for any of the foregoing persons to fail to produce upon demand by the Comptroller any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

Art. 8.19. Record of Carriers.

Every common and contract carrier transporting tobacco products in this State, whether in intrastate or interstate commerce, shall keep a complete record in Texas of all tobacco products so transported or handled which record shall show separately for each transaction the name of the consignor and consignee, the date of delivery, and the kind or quantity of tobacco products transported or handled. Such records together with all other books or records which may

be in the custody of said carriers showing the shipment of tobacco products shall be open to the inspection at all times of the Comptroller, Attorney General, and their authorized representatives and said common and contract carriers shall give and permit such authorities free access to all such books and records and all tobacco products in the custody of such carrier.

Art. 8.20. Unlawful Possession, Evidence.

Except as herein provided, it shall be unlawful for any person other than a distributor to have in his possession for sale, distribution or use, or for any other purpose, tobacco products upon which a tax is required to be paid by this Chapter, without having the proper evidence showing tax to be paid, and the absence of such evidence shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the non-payment of said tax.

No person, other than a common carrier, shall transport within this State tobacco products upon which a tax is required to be paid, without having evidence of tax payment on said tobacco products or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting tobacco products for a full and complete inspection of the cargo carried.

No person shall knowingly use, consume or smoke, within this State, tobacco products upon which a tax is required to be paid without said tax having been paid.

No person shall use any artful device or deceptive practice to conceal any violation of this Chapter or mislead the Comptroller in the enforcement of this Chapter.

Art. 8.21. Seizure. Sale by Comptroller.

All tobacco products on which taxes are imposed by this Chapter, which shall be found in the possession, or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the Tobacco Products Tax Law, and all tobacco products which are removed or are deposited or concealed in any place with intent to avoid payment of taxes levied thereon, and any automobile, truck, boat, conveyance or other vehicle whatsoever, used in the removal or transportation of such tobacco products for such purposes, and all equipment, paraphernalia, or other tangible personal property incident to and used for such purposes, found in the place, building or vehicle where such tobacco products are found, may be seized by the Comptroller, with or without process, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a Court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such tobacco products, vehicles and property so seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable.

The Comptroller, when making the seizures aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General or the district or county attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and Court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said Court shall issue notice to the owner or person in possession of such property to appear before such Court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be

served by the sheriff of said county. In the event the defendant in said proceeding is a non-resident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service or citation upon non-residents or unknown defendants, provided, however, such proceeding may be heard at any time after ten (10) days from service of such process or the first publication of such notice. And in such cases, the Court shall appoint an attorney to represent such defendant, who shall have the rights, duties and compensation as provided by existing Statutes in cases of attorneys appointed to represent non-residents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the Court shall order and decree the sale thereof to the highest bidder by the sheriff at public auction in the county of seizure, after ten (10) days notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and Court costs, shall be paid into the State Treasury and shall be allocated as the tobacco products tax is herein allocated. In the event the district or county attorneys file and prosecute such cases, a fee of Fifteen Dollars ($15) shall be paid to such officers in addition to all other fees allowed by Law under the maximum Fee Bill, which fee shall be collected as Court cost out of the proceeds of such sale.

In lieu of the forfeiture proceeding aforesaid the Comptroller may elect to sell the tobacco products and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars ($500) or less by the following summary proceedings:

(1) Comptroller shall publish a notice in some newspaper of the County where the seizure was made, describing the property seized and stating the time, place and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(2) Any person claiming such property so seized or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars ($250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to Comptroller, he shall transmit the same with a certified copy of the report or receipt of the property seized, filed in his office, to the Attorney General or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the Court of competent jurisdiction as provided by law.

(3) If no claim is interposed and no bond is given within the time above specified the Comptroller shall give ten (10) days notice of a sale of the property under seizure by publication two times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expense of seizure, appraisement, custody and sale, he shall deposit the proceeds thereof in the State Treasury, which shall be allocated to the funds to which the Tobacco Products Tax levied hereunder is apportioned.

In the event the tobacco products seized hereunder and sought to be sold upon forfeiture, summary sale, or other process provided by law shall be non-tax paid, the officers selling the same shall, upon sale thereof, cause to be paid, so required and deduct the expense thereof from the proceeds of such sale.

Art. 8.22. Seizure or Sale no Defense.

The seizure, forfeiture and sale of tobacco products and other property under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or exemption

to the person owning or having control or possession of such property from criminal prosecution for any act or omission made or offense committed under this Chapter or from liability to pay penalties provided by this Chapter, with or without suit therefor.

Art. 8.23. Waiver Permitted; Penalty.

Jurisdiction is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall first pay the tax due on tobacco products seized the amount and value of the tax necessary to represent the tax, and in addition to the tax required, pay into the State Treasury through the Comptroller a sum equal to the value of the tax required to be paid on such tobacco products. The said Comptroller may make a compromise with any claimant, before or after the claim is filed in court. A record of all such compromises and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection. If upon examination of invoices or other investigation the Comptroller finds the tobacco products to be sold without having been tax paid as required in this Chapter, he shall have the power to require of such person, to pay into the State Treasury through him a sum equal to twice the amount of the tax due. If upon examination of invoices or other investigation, such person is unable to furnish evidence to the Comptroller of a report showing tax payment to cover non-tax paid tobacco products purchased by him, the prima facie presumption shall arise that such tobacco products were sold without reporting and remitting tax due.

Art. 8.24. Disposition of Money.

All moneys collected by the Comptroller under the provisions of Article 8.23 of this Chapter, after payment of all cost and commissions, shall be paid to the Treasury and credited as the taxes imposed hereunder are credited.

Art. 8.25. Duties of Comptroller; Rules and Regulations.

(a) It is hereby made the duty of the Comptroller to collect, supervise and enforce the collection of all taxes and penalties that may be due under the provisions of this Chapter and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller also shall have the power and authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws of the Constitution of this State, or of the United States, for the enforcement of the provisions of this Chapter and the collection of revenues hereunder. (b) The Comptroller shall promulgate rules and regulations providing for the allowance for credit of taxes paid on tobacco products where such tobacco products have become unfit for use or consumption, or unsaleable, and which tobacco products have been destroyed or returned to the manufacturer, upon proof satisfactory to the Comptroller, that such tobacco products have become unfit for use or consumption or unsaleable and have been destroyed or returned to the manufacturer.

Art. 8.26. Misdemeanors, Penalties.

(a) Whoever shall make a first sale of any cigars or any tobacco products without the tax having been paid or accounted for by a distributor holding a valid distributor's permit or (b) whoever shall sell, offer for sale, or present as a prize or gift any tobacco products on which the tax has not been paid, or accounted for by a distributor holding a valid distributor's permit, or (c) whoever shall knowingly consume, use or smoke any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributor's permit, or (d) whoever possesses in violation of any provision of this Chapter tobacco products upon which a tax in an amount of not more than Fifty Dollars ($50) is required to be paid, or (e) whoever shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (f) whoever shall mislead the Comptroller in the enforcement of this Chapter, or (g) whoever shall refuse to surrender to the Comptroller upon demand any tobacco products possessed in violation of any provision of this Chapter, or (h) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any tobacco products without at the time of said first sale having a valid per-

mit, or (i) shall make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or (j) whoever as a distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of tobacco products, or (k) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell tobacco products without at the time of said sale having a valid permit, or (l) shall sell tobacco products without at the time of said sale having a permit posted so as to be easily seen by the public, or (m) whoever as distributing agent shall store or distribute tobacco products on which the tax has not been paid without at the time of said storage or distribution having a valid distributing agent's permit, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

Art. 8.27. Felonies, Penalties.

(a) Whoever shall knowingly transport any tobacco products upon which a tax is required to be paid without said tax having been paid, or accounted for by a distributor holding a valid distributors permit, or (b) while transporting tobacco products shall willfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises, where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall possess in violation of any provision of this Chapter tobacco products upon which a tax in an amount of more than Fifty Dollars ($50) is required to be paid, or (f) whoever as distributor or a distributing agent, or as an agent, employee, or representative of a distributor or distributing agent, shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (g) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Chapter to be made, or (h) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee, or representative or a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books or records required herein to be kept, or (i) shall refuse to permit the Comptroller or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the tobacco products business that may be kept, or (j) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Chapter to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (k) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be punished, by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed elsewhere in this Chapter overlap as to offenses which are also punishable under Article 8.27 of this Chapter, then the penalties prescribed by this Article 8.27 shall apply and control all other penalties.

Art. 8.28. Venue for Felonies.

Venue of a prosecution under the preceding Article shall be in Travis County, Texas, or in the County of Texas, where the offense occurred.

Art. 8.29. Fees for New Permits Prorated.

Permits required by Articles 8.06, 8.08 and 8.16 of this Chapter issued after the effective date of this Chapter shall expire the last day of February following issuance. From the effective date of this Chapter the Comptroller shall prorate the fees for new permits required by Articles 8.06 and 8.16 of this Chapter by allowing a discount computed by quarters of

the licensing year. The permit year shall be from the first day of March through the last day of February.

Each permit holder required to obtain a permit under Article 8.06, 8.08 and 8.16 of this Chapter who fails to obtain a renewal permit prior to the beginning of the licensing year shall pay in addition to the permit fee a late application fee of One Dollar ($1), which shall be paid to the Comptroller at the time the permit fee is paid.

When it is necessary for any authorized representative of the Comptroller to visit any permit holder to collect a permit fee due under this Chapter the permit holder shall pay a service fee of Five Dollars ($5) in addition to the permit fee.

Art. 8.30. Floor Stocks Taxed, Rate of Tax, Penalty.

Every person having possession of any tobacco products taxable under this Chapter for the purpose of sale on the effective date of this Chapter shall immediately inventory the same and file a report of such inventory with the Comptroller of Public Accounts and attach to such inventory a cashier's check payable to the State Treasurer in a sum equal to the tax due on such tobacco products computed at the rates provided in this Chapter. Such person shall retain as a receipt to evidence payment of the tax a purchaser's copy of the cashier's check and shall retain a copy of the inventory reported to the Comptroller.

Failure or refusal to render such inventory shall be deemed sufficient grounds for refusal by the Comptroller to issue a permit required by this Chapter, and in addition thereto, any person failing or refusing to render such inventory shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000).

CHAPTER 9

MOTOR FUEL (GASOLINE) TAX

Art. 9.01. Definitions.

The following words, terms and phrases shall, for all purposes of this Chapter, be defined as follows:

(1) "Motor Fuel" shall mean all products commonly or commercially known or sold as gasoline, including natural, absorption, casinghead and drip gasolines, regardless of their classification or uses.

(2) "Motor vehicle" shall mean and include any automobile, truck, tractor, bus, vehicle, engine, machine, mechanical contrivance, or other conveyance which is propelled by an internal combustion engine or motor.

(3) "Vehicle tanks" shall mean an assembly used for the transportation, hauling, or delivery of liquids, comprising a tank, which may be one compartment or may be subdivided into two (2) or more compartments, mounted upon a wagon, automobile, truck, or trailer, together with its accessory piping, valves, meter, etc. The term "compartment" shall be construed to mean the entire tank whenever this is not subdivided; otherwise, it shall mean any one of those subdivided portions of the tank which is designed to hold liquid.

(4) "Distributor" shall mean and include every person who refines, distills, manufactures, produces, or compounds motor fuel or blending materials in this State, or imports or causes to be imported motor fuel or blending materials into this State, or in any other manner acquires or possesses said products, for the purpose of making a first sale, distribution or use of said products in this State; and said term shall also mean and include any wholesale dealer or jobber of motor fuel who desires to purchase motor fuel without paying the tax to the distributor selling said products when the motor fuel is purchased for taxable resale, distribution, or use thereof by said wholesale dealer or jobber in this State. The said term shall also include any person who produces or is responsible for the production of the product commonly known as "drip gasoline" unless said drip gasoline is totally destroyed, burned, or otherwise rendered incapable of use as motor fuel or blending material.

(5) "Distribution" shall mean and include any transaction, other than a sale, in which ownership or title to motor fuel, or any derivative of crude oil or natural gas, passes from one person to another.

(6) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation (public, private, or municipal), trustee, agency, or receiver.

(7) "Dealer" shall mean and include every person other than a distributor who engages in the business in this State of distributing or selling motor fuel within this State.

(8) "Public highway" shall mean and include every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, maintenance, or repair.

(9) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(10) "First sale" shall mean, except as otherwise provided herein, the first sale or distribution in this State of motor fuel, produced, refined, compounded, imported into, or otherwise acquired in said State; provided that when motor fuel has been purchased tax free under the terms of this Chapter, the first resale or distribution of said motor fuel for any purpose other than a tax free sale duly authorized as such by the Comptroller shall, for the purposes of this Chapter, mean and constitute a "first sale."

(11) "Refund Motor Fuel" shall mean motor fuel used, sold, or disposed of for any purpose for which a refund of the tax paid thereon is authorized by law. And any motor fuel so used or disposed of shall be construed to have been used or disposed of for "refund purposes."

(12) "Refund" Dealer" shall mean any dealer, distributor, or other person who engages in the selling of refund motor fuel, or who appropriates for his own use and consumption motor fuel on which a refund of the tax paid on such motor fuel is authorized by this Chapter.

(13) The term "tax free," as applied to the sale or purchase of motor fuel, shall mean the sale or purchase of said motor fuel on authority granted by the Comptroller under the terms of this Chapter without collecting or paying the tax on said sale or purchase.

Art. 9.02. Rate of Tax; Allowances for Handling and Evaporation.

(1) There shall be and is hereby levied and imposed (except as hereinafter provided) upon the first sale, distribution, or use of motor fuel in this State an excise tax of Five Cents (5¢) per gallon or fractional part thereof so sold, distributed, or used in this State. Every distributor who makes a first sale or distribution of motor fuel in this State for any purpose whatsoever shall, at the time of such sale or distribution, collect the said tax from the purchaser or recipient of said motor fuel, in addition to his selling price, and shall report and pay to the State of Texas the taxes collected at the time and in the manner as hereinafter provided. Every such distributor shall also be liable to the State of Texas for the said tax of Five Cents (5¢) per gallon on each gallon of motor fuel or fractional part thereof used or consumed by him, and shall report and pay said tax as hereinafter provided. In each subsequent sale or distribution of motor fuel upon which the tax of Five Cents (5¢) per gallon has been collected, the said tax shall be added to the selling price, so that such tax is paid ultimately by the person using or consuming said motor fuel for the purpose of generating power for the propulsion of any motor vehicle upon the public highways of this State.

It is the intent and purpose of this Article to collect the tax levied herein at the source of said motor fuel in Texas or as soon thereafter as the same may be subject to being taxed. No person, however, shall be required to pay a tax on motor fuel brought into this State in a quantity of thirty (30) gallons or less in a fuel tank, with a capacity of not more than thirty (30) gallons, when said fuel is connected with and feeds the carburetor of said motor vehicle and the motor fuel contained therein is used in the operation of said motor vehicle and not otherwise.

(2) Provided that the tax on one and one-half per cent (1½%) of the taxable gallons of motor fuel sold or distributed in this State shall be allocated to the persons selling, distributing, or handling said motor fuel or the taxes collected thereon, which said allocation or allowance shall be deducted in the payment of said tax to the State of Texas in the following manner: The tax on one and one-half per cent (1½%) of said taxable gallonage shall be deducted by the distributor who refines, imports into, or produces motor fuel in Texas and makes the first taxable sale or distribution thereof; the tax on one and

four-tenths per cent (1-4/10%) of said taxable gallonage shall be deducted by the distributor who purchases motor fuel tax free from another licensed distributor under authority issued by the Comptroller and makes a taxable resale or distribution thereof; and one-tenth of one per cent (1/10 of 1%) of the tax collected upon the resale or distribution of motor fuel purchased tax free by a distributor shall be set aside in the State Treasury for use by the Comptroller as hereinafter provided.

The above allocation or allowances shall be for ordinary evaporation and other handling losses, not provided for in this Chapter from the time of the first sale or distribution of motor fuel in this State until its ultimate delivery to the person using or consuming said motor fuel and for the expense of collection, accounting for, reporting and handling such motor fuel and the taxes collected thereon, and shall be apportioned among all persons selling, distributing or handling motor fuel or the tax collected thereon in this State as follows:

I. One-half of one per cent (½ of 1%) to the distributor who refines, imports into, or produces motor fuel in Texas and makes the first taxable sale or distribution of said motor fuel in this State;

II. One-half of one per cent (½ of 1%) to the wholesaler or jobber who pays the tax to a distributor on motor fuel purchased for resale or distribution to retailers;

III. One-half of one per cent (½ of 1%) to the retailer or other person making a sale or distribution of such motor fuel to the person using or consuming said motor fuel;

IV. Provided that the tax on nine-tenths of one per cent (9/10 of 1%) of said taxable gallonage shall be apportioned to a distributor who performs functions both as a distributor and as a wholesaler or jobber by paying over to the State of Texas taxes collected upon the resale or distribution of motor fuel which has been purchased tax free under authority issued by the Comptroller and thereafter resold or distributed at wholesale to retailers;

V. One-tenth of one per cent (1/10 of 1%) of the taxes collected and paid over to the State upon the resale or distribution of motor fuel purchased tax free by a distributor under authority issued by the Comptroller shall be allocated to and set aside in the State Treasury for use by the Comptroller in the administration and enforcement of the provisions of this Article. Any funds allocated and appropriated for administration and enforcement unspent at the end of each fiscal year shall be allocated in the same manner as is the motor fuel tax after administrative and enforcement allocations.

In the distribution of motor fuel in this State if any person performs more than one (1) of the functions or activities referred to above (distributor, wholesaler or jobber, and retailer), then he shall be entitled to the apportionment or allowance for each such function or activity, subject to the limitations prescribed for each such function or activity, and provided that the aggregate allowance shall never exceed the total amount authorized herein for all three functions or activities, provided further, if sales or distributions of motor fuel are made between wholesalers, jobbers, or distributors between the first sale made at source of said motor fuel in Texas and its sale to the retailer, then the aggregate allowances shall never exceed one and one-half per cent (1½%).

Nothing contained herein shall be construed as entitling any person using or consuming motor fuel in this State to any portion of said allocation or allowance.

Pursuant to rules and regulations to be prescribed by the Comptroller the allocation or allowance hereinabove provided shall be distributed to the persons entitled thereto as follows: (1) Every distributor who makes a first sale or distribution of motor fuel to a wholesaler, jobber, or another distributor, upon which said first sale or distribution the tax is required to be collected and paid over to this State shall, after setting out the tax separately on the manifest as required by this Chapter, deduct one per cent (1%) from the amount of such tax and the balance shall be the amount such distributor shall be entitled to collect from such purchaser; and (2) every wholesaler, jobber or distributor who makes a sale, resale, or distribution of motor fuel upon which the tax is required to be collected, to a retailer of said motor fuel shall, after setting out the tax sep-

arately on the manifest as required by this Chapter, deduct one-half of one per cent (½ of 1%) from the amount of such tax and the balance shall be the amount such wholesaler, jobber or distributor shall be entitled to collect from such purchaser.

(3) The tax herein imposed shall be posted separately from the price of the motor fuel, wherever sold in this State.

(4) No tax shall be imposed upon the sale, use, or distribution of any motor fuel, the imposing of which would constitute an unlawful burden on interstate commerce, and no tax shall be imposed upon the sale of any motor fuel for export from the State of Texas (including both sales in interstate and foreign commerce) where the motor fuel is delivered to a common carrier, ocean-going vessel (including ship, tanker or boat), or a barge, and is moved forthwith outside of this State. Provided, however, that the Comptroller may require satisfactory evidence of any such sale, use, distribution or delivery. In the event this Article is in conflict with the Constitution of the United States or any Federal law, with respect to the tax levied upon the first sale, distribution, or use of motor fuel in this State, then it is hereby declared to be the intention of this Article to impose the tax levied herein upon the first subsequent sale, distribution, or use of said motor fuel which may be subject to being taxed.

(5) Provided, that the tax imposed herein shall be in lieu of any other excise or occupational tax imposed by the State or any political subdivision thereof on the sale, use, or distribution of motor fuel.

Art. 9.03. Reports.

(1) Every distributor who shall be required to collect the tax levied by this Chapter upon the first sale or distribution of motor fuel in this State, or who shall be required to pay the tax levied herein upon motor fuel used by said distributor, shall upon or before the 25th day of each calendar month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, the amount of such tax required to be collected during the calendar month next preceding and the amount of such tax required to be paid upon motor fuel used by said distributor during said preceding calendar month, and at the same time, such distributor shall make and deliver to the Comptroller at his office in Austin, Travis County, Texas, a report properly sworn to and executed by such distributor, or his representative in charge, which shall show the date said report was executed, the name and address of said distributor, and the month which the report covers, and which report shall show separately by gallons the motor fuel on hand at the beginning and at the end of the month, and complete information of all motor fuel handled during the month, including motor fuel purchased or received in interstate commerce, motor fuel purchased or received in intrastate commerce, reflecting separately the quantity received with the tax paid and the quantity received without the tax having been paid, motor fuel refined, motor fuel acquired by blending, motor fuel sold in interstate commerce, motor fuel sold in intrastate commerce, motor fuel sold and exported, motor fuel sold to the United States Government, motor fuel sold to a distributor for further refining, processing, blending, or for exportation upon which no tax was collected, motor fuel lost by fire or other accident, motor fuel lost by refinery shrinkage, evaporation, or other losses, and motor fuel used and consumed by the distributor and his representatives. The said report shall also show complete information by gallons of all blending materials purchased, acquired, sold, used, and lost by fire or otherwise, during the month the report covers, and the beginning and ending inventories of such blending materials. Said report shall also show a complete record of the number of barrels of crude oil refined and the number of cubic feet of gas processed. Provided that where a qualified distributor has not sold, used, or distributed any motor fuel during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any distributor to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all

the information required to be reported herein. Every distributor at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for the period covered by the report.

(2) Provided further, that every person selling motor fuel in export or interstate commerce only, and every person selling motor fuel upon which no tax is required to be paid under the provisions of this Chapter, shall nevertheless be required to keep the same records and make the same reports to the Comptroller, accounting for the motor fuel so sold, that the provisions of this Chapter require a distributor to keep and make.

(3) If any distributor shall fail to remit proper taxes collected upon the first sale or distribution of motor fuel, or taxes due upon the use of motor fuel in Texas, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the distributor shall pay as additional penalty any reasonable expenses included by the Comptroller in such audit. Provided, however, that all funds paid to the auditors of the Comptroller as expenses incurred in making audits shall be placed in a special fund in the State Treasury, which shall be used until exhausted for making other audits, and said sums are hereby appropriated for that purpose. Provided that nothing herein shall prevent the Comptroller, when said fund is exhausted, from using other funds available for that purpose.

(4) When it shall appear that a distributor to whom the provisions of this Chapter shall apply has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any motor fuel during any tax-paying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such distributor for the current period with the total amount of taxes so erroneously paid. Such credit shall be allowed before any penalties and interest shall be applicable.

Art. 9.04. Penalties.

(1) All taxes collected hereunder by any distributor, or by any director, officer, agent, employee, trustee, receiver of such distributor, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Chapter.

(2) If any such distributor or any director, officer, agent, employee, trustee, receiver of such distributor, or any person, shall wilfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Chapter, on or before the date such payment is due as provided by this Chapter, such distributor or such director, officer, agent, employee, trustee, receiver of such distributor, or such person, shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars ($500) nor more than Ten Thousand Dollars ($10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any distributor, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such distributor, or any director, officer, agent, employee, trustee, receiver of such distributor, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such distributor, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars ($500), nor more than Ten Thousand Dollars ($10,000), or by both such fine and jail imprisonment.

Art. 9.05. Tax Free Sales.

(1) The Comptroller may authorize and permit any person producing natural gasoline, casinghead gasoline or

drip gasoline, or any derivative or condensate of crude oil or natural gas, in their natural and unrefined state, or any non-operating interest owner in a gasoline plant, or any person operating a pipeline as a common carrier, or any licensed distributor of motor fuel in this State to make a sale, resale, or distribution of such products or of motor fuel, without collecting the tax levied herein, to any distributor holding a valid permit under the terms of this Chapter, when such distributor purchasing the same has, in the opinion of the Comptroller, a satisfactory and sufficient bond, and when the product is sold and purchased for the purpose of exportation, further refining, further processing, further treating, blending or compounding with other products to produce motor fuel, or non-motor fuel products, or for resale to the Federal Government for the exclusive use of said Federal Government, or for resale for some one (1) or more of such purposes and not otherwise.

(2) The Comptroller may also authorize and permit any licensed distributor to make sales or distributions of motor fuel without collecting the tax to any other licensed distributor purchasing said motor fuel for resale or distribution of said product at wholesale when said other licensed distributor holds a valid distributor's permit and has, in the opinion of the Comptroller, a satisfactory and sufficient bond to justify such tax free purchases.

Every such distributor who shall be authorized and permitted to purchase motor fuel without paying the tax thereon for the purpose of resale or distribution of said products at wholesale, shall collect and pay over to the State of Texas at the time and in the manner provided in this Chapter, a tax at the rate of Five Cents (5¢) per gallon upon the first sale or distribution of said motor fuel made thereafter for any purpose other than a tax free sale authorized by the Comptroller, and shall pay said tax at the rate aforesaid upon each gallon of motor fuel used or unaccounted for by said distributor during the calendar month next preceding the month said tax payment is required to be made, it being the intent hereof that said distributor shall on or before the 25th day of each calendar month report and pay to the State of Texas all taxes due on motor fuel purchased tax free and thereafter, sold, resold, distributed, used or unaccounted for during the calendar month next preceding. Any motor fuel purchased tax free which is unaccounted for at the end of each calendar month shall be prima facie presumed to have been sold or used for taxable purposes.

The Comptroller may, upon request from any distributor, issue a certificate of authority to make sales of motor fuel without collecting the tax, under the terms and conditions provided in this Chapter, which certificate shall show the date issued, the names of the seller and purchaser of said motor fuel, the quantities authorized, and the period of time and the conditions under which said motor fuel may be sold and distributed tax free to the purchaser thereof, and any distributor who shall make sales of motor fuel in Texas without holding a valid certificate of authority or who shall make sales of motor fuel in excess of the quantities authorized shall be liable for the tax imposed upon the first sale or distribution of said motor fuel. The certificate of authority to make tax free sales of motor fuel shall be subject to revocation for failure or refusal by the seller or purchaser of said motor fuel to comply with any provisions of this Article or any rule and regulation duly promulgated by the Comptroller, or for the violation of the same, and said certificate of authority shall be revoked forthwith upon the failure of any distributor to report and pay all taxes due and owing the State of Texas within the time prescribed by this Article, or at the time fixed by the Comptroller for making periodical reports and tax payments, and no further tax free sales shall be made to a distributor named in any certificate of authority after said certificate has been revoked until such certificate has been reinstated or a new certificate or authority has been issued.

(3) Provided further, that any producer, pipeline operator, or licensed distributor who shall make any sale or distribution of motor fuel as provided herein, shall be required to make and keep all the records and manifests required of a distributor in Art. 9.09, and shall be required to make and file with the Comptroller the return or report required by Art. 9.03, showing all the information set out therein.

When motor fuel is sold or distributed tax free under authority issued by the Comptroller, the manifest required to be issued shall bear the notation that said product is sold for the purpose of resale to the Federal Government, exportation, further refining, blending, or resale at wholesale, whichever the case may be. Provided, further, that every producer and every pipeline operator shall qualify as a licensed distributor before selling the products named herein to any person other than a licensed distributor. All sales and distributions made without collecting the tax levied herein shall be made subject to any rules and regulations promulgated by the Comptroller.

(4) All taxes collected under the provisions of this Chapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State at the time and in the manner provided in this Chapter.

(5) It is the intent of this Article that when a certificate of authority has been issued to a licensed distributor to make tax free sales to another licensed distributor, said sales shall be tax free within the limitations set out in said certificate of authority.

Art. 9.06. Application for Distributor's Permit.

(1) From and after the effective date of this Chapter, all distributors of motor fuel in this State now engaged, or who desire to become engaged, in the sale, use, or distribution of motor fuel upon which the tax levied herein is required to be paid, shall file a duly acknowledged application for motor fuel distributor's permit with the Comptroller on a form prescribed by him, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributor transacts or intends to transact such business as distributor, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office addresses. The Comptroller may require in said application such other information as he may desire. Except as authorized in Art. 9.05 of this Chapter no distributor shall make a first sale, use, or distribution of motor fuel until such application has been filed and a permit has been obtained.

(2) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every distributor a nonassignable, consecutively numbered permit authorizing the first sale, use, or distribution of motor fuel, or its substitute, in this State from the date of the issuance of said permit, until and including the following December 31st. On or before January 1st of each year, and before any distributor shall make a first sale, use or distribution of motor fuel, or engage in selling motor fuel in this State after December 31st, an application shall be filed and a permit obtained for the calendar year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Chapter, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said distributor shall not sell, use, or distribute motor fuel upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any motor fuel tax, penalty, or interest under the provisions of this Chapter.

Art. 9.07. Bond.

(1) Before any permit shall be issued and before engaging in the first sale, use, or distribution of motor fuel, upon which a tax is required to be paid in Texas, every distributor shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a distributor to be obtained. The said bond shall be signed by said distributor and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and except as hereinafter provided, in an amount not less than One Thousand Dollars ($1,000) nor more than Fifty Thousand Dollars ($50,000), payable to the State of

Texas, and conditioned upon the full, complete, and faithful performance by the distributor of all the conditions and requirements imposed upon him by this Chapter, or the rules and regulations of the Comptroller promulgater hereunder, on a form to be prescribed by the Comptroller with the approval of the Attorney General, expressly providing for the performance of said obligations and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, and all other taxes due and accruing upon the use of motor fuel by said distributor, and all costs, penalties, and interest provided in this Chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any calendar year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided further, that the said renewal certificate, as, if and when issued, shall have all the force and effect of an original bond for the calendar year for which renewal certificate is issued. The amount of any bond required of any distributor shall be fixed by the Comptroller, and subject to the limitations herein provided, additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the distributor may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than three (3) times the highest tax said distributor has collected and paid to the State for any month during the preceding six (6) months, or the highest tax that could accrue on motor fuel purchased tax free during any said month, but which shall never be less than the minimum aforesaid.

Provided, that when a distributor or other person produces, manufactures, refines, or acquires in any other manner any product of petroleum or natural gas for his own use and consumption as motor fuel and not to be sold or distributed, the Comptroller may accept a minimum bond in an amount of not less than Five Hundred Dollars ($500); said bond to be in the form and substance and conditioned as hereinabove provided.

(2) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries on any bond or execution of any new bond or renewal of a permit shall invalidate any bond. A new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Provided further, that the Comptroller shall have the authority to require any distributor to make reports and remit to the State for taxes collected by him, or taxes accruing on motor fuel used by him, at shorter intervals than one (1) month at any time any maximum bond shall, in the opinion of said Comptroller, become insufficient. Should any distributor fail or refuse to supply a new or additional bond within ten (10) days after demand, or shall fail or refuse to file reports and remit or pay the said tax at the intervals fixed by the Comptroller, said distributor's permit shall be cancelled by the Comptroller as herein provided.

(3) Any surety on any bond furnished by any distributor as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on receipt of notice of such request notify the distributor who furnished such bond, and unless such distributor shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do

business under the laws of the State, in the amount and form hereinbefore in this Article provided, the Comptroller shall proceed to cancel the permit of said distributor in the manner herein provided. If such new bond shall be furnished by said distributor as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(4) That in lieu of giving a bond, any distributor may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until securities are substituted for the same, or a bond executed in lieu thereof, or until the Comptroller has made a complete and thorough investigation and authorized the same to be released; and, provided, in lieu of cash or bond required by this Article, such distributor may deposit securities with the Comptroller, that shall be acceptable to him. Said securities shall be placed in the Treasury as other securities, but in all events, shall be of the same class as the funds of the University of Texas may be legally invested in. Provided, however, that if, in the opinion of the Comptroller, the cash or securities so deposited shall become insufficient for the purpose for which they were deposited, he shall demand additional cash or securities, and upon the failure or refusal of distributor to supply the additional cash or securities, within ten (10) days after demand, the Comptroller shall cancel the distributor's permit as herein provided. When default of payment of taxes collected upon the sale or distribution of motor fuel and accruing upon the use of motor fuel by said distributor, is made by any distributor who has money and/or securities deposited with the State Treasurer in lieu of a bond as herein provided, suit shall be instituted by the State, and after the State has established its debt for delinquent taxes by final judgment of Court, money on deposit in suspense account shall be withdrawn therefrom and shall be used to pay off and satisfy such judgment; and provided further, if securities are on deposit with the State Treasurer, such securities shall be sold by the Comptroller, and the proceeds of sale shall be used in paying off and satisfying said judgment and accrued Court costs and interest. Provided however, the defaulting distributor may acknowledge in writing the correctness of the State's claim for taxes, costs, and penalties, and may authorize the withdrawal of said money or securities to pay on said claim without having suit filed.

Provided further, that the cash or securities, or any unpaid portion thereof, deposited by said distributor in lieu of surety bond, shall not be returned or refunded to any person except the distributor, unless the person claiming any right, title, and interest in and to said funds or securities, shall have declared said right, title, and interest in writing, executed jointly by said distributor and said claimant, under oath, and filed with the Comptroller at the time such deposit was made. Provided further, that suit may be filed against any surety or sureties on any bond furnished by a distributor, without first resorting to or exhausting the assets of said distributor or without making said distributor, as principal obligator in said bond, a party to said suit.

Art. 9.08. Lien.

All taxes, penalties, interest and costs due by any distributor under the provisions of this Chapter and all taxes collected and required to be paid by said distributor to the State, shall be secured by a preferred lien, first, and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any distributor, devoted to or used in his business as a distributor, which property shall include refinery, blending plants, storage tanks, warehouses, office building and equipment, tank trucks or other motor vehicles, stocks on hand of every kind and character, whatsoever used or usable in such business, including crude oil or other materials for the manufacture, refining, blending, or compounding of motor fuels and the refined products therefrom, and the proceeds from the sale of such materials and refined products, including cash on hand and in bank, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated devoted to such use, and each tract of land on which such refinery, blending plant, tanks,

or other property is located, or which is used in carrying on such business.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's Lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Article as to any motor vehicle upon which a tax lien exists to secure the payment of the taxes owing by any distributor, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such distributor, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

Art. 9.09. Distributor's Records.

(1) Every distributor shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete and well-bound book record of all crude oil and other oil or products from which such distributor may refine or blend any motor fuel or other derivatives of crude petroleum that is sold or used by him, and his record shall show the date of receipt, the name and address of the person from whom purchased, the means of delivery and the quantity in barrels, of all such crude oil and other oil or products; also it shall show all sales of the same as and when made from stocks on hand; the quantity refined or blended, and inventories on the first of each month. Provided further, a complete record in barrels or gallons shall be kept of all liquid byproducts derived or obtained from any refining, absorption, or recycling operation. Said record shall also show separately the number of barrels or gallons of such products on hand at the first of each month and the number of barrels or gallons sold, used, or otherwise disposed of.

Every distributor shall also keep in Texas for a period of two (2) years, open to said inspection, a complete and well-bound book record of all motor fuel, casinghead gasoline, natural or drip gasoline and other derivatives or condensate of crude petroleum or natural gas, or their products, purchased or received by said distributor. Such records shall show the date received, from whom purchased or received, the quantity received, the commodity or kind of product received, and such other information as will provide a complete record of the disposition of said products. Said distributor shall also keep for a period of two (2) years a complete record of inventories on the first of each month of all motor fuel, casinghead gasoline, natural gasoline or drip gasoline, or other derivatives or condensates of crude petroleum, or natural gas, or their products.

(2) Every distributor shall keep also in Texas for a period of two (2) years, open to said inspection a complete record of each and every sale, distribution or use of motor fuel, crude oil, kerosene, naphtha, distillate, casinghead gasoline, drip gasoline, absorption and natural gasoline, and other derivatives or condensates of crude oil or natural gas, including fuel oil and other liquid residues, regardless of whether or not a tax is due upon said products under the provisions of this Chapter; and providing that the record of each such sale, distribution, or use of such commodities shall include the date of any such transactions, the name and address of

each purchaser or user, and the amount of any such commodity so sold or used. And it is especially provided that any such sale, distribution, or use of any of the foregoing commodities shall be recorded upon a form of manifest to be prescribed or approved by the Comptroller and furnished by the distributor. Said manifest shall be issued in not less than duplicate counterparts and numbered consecutively. Said manifest shall be printed and the counterparts shall be printed on paper of different color, and shall have printed thereon the name of the distributor, his address, the serial number of said manifest, and spaces shall be provided thereon wherein shall be shown the date of such sale, distribution or use, the purchaser or other recipient and his address, the quantity sold, the means of delivery, including the license number of and description if delivered into or by a motor vehicle, trailer, the number and initial if delivered by tank car, the name or description if delivered by boat or barge, and the opening and closing record of meter readings or tank gauges if delivered by pipeline, and the time of delivery into the tank wagon, trailer or other conveyance; provided, however, that rail shipments of motor fuel and other derivatives or condensates of crude products or natural gas shall be supported by regular bills of lading. Provided further, that the manifest shall reflect separately the tax involved in the sale of motor fuel apart from the cost thereof, less the tax. The manifest shall be properly made out and signed by both the distributor and the purchaser or recipient of said commodity. Every person receiving from a distributor any motor fuel and reselling or delivering the same, shall likewise record each sale or delivery upon similar manifests. Provided, however, that manifests shall not be required upon retail sales in quantities of thirty (30) gallons or less.

(3) It is the intent and object of this Article to require that every person, except as herein expressly provided to the contrary, who shall transport any commodity required to be recorded upon a manifest shall carry with said commodity at all times a manifest covering said cargo, and said person shall issue a manifest to the purchaser or receiver of all or any part of the commodity so being transported, and to require that such purchaser or receiver shall receipt on said manifest for the quantity so delivered and received, and that one counterpart of the manifest shall be delivered to the purchaser, to be retained by him for the time and in the manner required herein, for inspection by the Comptroller and Attorney General, and that another counterpart shall be retained by the distributor or other seller for like purposes and periods. If no sale is involved in such transaction a notation showing such fact or information shall be recorded on said manifest. Provided further, that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel for sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities shall not be required to carry or issue a manifest for motor fuel in quantities of one hundred (100) gallons or less, when said motor fuel is contained and transported in the fuel tank connected to and feeding the carburetor of any motor vehicle owned or operated by said carrier or person, and is used exclusively for the propulsion of such motor vehicle and is not transported for sale, distribution or delivery to any other person. This exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel in any quantity for sale or distribution for sale.

Provided, however, that where a distributor markets his products through his own service stations, that as to said service stations, it will be sufficient to keep the records at said service stations, hereinafter required by this Chapter to be kept by dealers.

Art. 9.10. Dealers' Records.

Every dealer shall keep, at each place of business in Texas, for a period of two (2) years, for the inspection at all times of the Comptroller and the Attorney General, or their authorized representatives, the manifest furnished by the seller, as required herein, and in addition thereto a well-bound book record which will provide complete information of all motor fuels, naphtha, kerosene, distillate, gas oil, fuel oil and/or casinghead gasoline, natural gasoline, drip gasoline or absorption gasoline,

and all other derivatives or condensates of crude oil or natural gas, purchased or received by him at each place of business, and inventories on the first of each month of all such products. Such record shall show the date received, the name and address of the person from whom purchased or received, the number of gallons, the designation by name of the particular kind of motor fuel or other products purchased or received, the point from which shipped or delivered, the point at which received, the number and initials of car if shipped by rail, the name of the boat or barge, if shipped by water, and the license number and description, if received by motor vehicle or trailer, and in addition, the total daily sales, designating the particular kind of motor fuel, kerosene, naphtha, distillate, gas oil, fuel oil, casinghead gasoline and/or natural gasoline, drip gasoline, absorption gasoline, or other derivatives or condensates of crude oil or natural gas, sold or delivered, whether the same be taxable or not under the provisions of this Chapter. Upon each sale or delivery of any of the commodities named herein at wholesale for the purpose of resale, and upon each retail sale, distribution or use of said commodities in quantities of more than thirty (30) gallons, every dealer shall be required to issue and keep for a period of two (2) years, a manifest made up as required by Art. 9.09 of this Chapter, giving full details of such sales, deliveries, distributions, or use, as said form manifest provides shall be given. The duplicate of said manifest shall be delivered to the purchaser or carrier and the original kept by said dealer.

Art. 9.11. Carrier Records.

(1) All common and contract carriers in this State shall keep for a period of two (2) years, open to inspection by the Comptroller, or his authorized representatives, a complete record of each transportation of motor fuel, showing the date of transportation, the consignor and consignee, the means of transportation and the quantity and kind of motor fuel transported. Said record shall show such intrastate records separately from interstate records.

(2) All persons operating trucks, pipelines, and other conveyances as common or contract carriers in the transportation of motor fuel into and from this State, exclusive of railroads, shall render a sworn report to the Comptroller not later than the 20th of each month, on a form prescribed by said Comptroller, showing a description of the truck or other conveyances in which the same was transported, the date said motor fuel was transported, the consignor and consignee, and the quantity and kind of said motor fuel which was transported by such persons during the preceding month. There shall also be included in said report full data concerning the diversion of shipments en route as amount to a change from interstate to intrastate and intrastate to interstate commerce. Such report shall show the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of motor fuel. All persons operating railroads as common carriers in the transportation of motor fuel into and from this State shall, as and when requested by the Comptroller, and in such form as may be prescribed, render, not later than the 20th of the following month, a sworn report for the preceding month, or for such other period or periods as may be requested, showing a description of the tank car or other conveyance in which the same was transported, and shall render such other information concerning the diversion of or change of shipments en route from interstate to intrastate commerce or intrastate to interstate commerce, as may be required by the Comptroller.

Art. 9.12. Liquid Residues.

Every person operating a pipeline for the purpose of conveying or moving natural gas through such pipeline shall either collect and conserve for the purpose of sale, distribution, or use the liquid residuent commonly known as "drip gasoline" which is formed and extracted from such pipelines, or if said product has no practical value to said person, he shall neutralize, burn, or otherwise destroy said product in a manner that will prevent its use as motor fuel in this State. If such drip gasoline is sold, distributed, or used as motor fuel, said person shall obtain the permit, make the reports, and keep the records of such sales, distributions, or use in compliance with the provisions of this Chapter.

Art. 9.13. Claims for Refunds.

(1) In all refund claims filed under this Article, the burden shall be on the claimant to furnish sufficient and satisfactory proof to the Comptroller of the claimant's compliance with all provisions of this Article; otherwise, the refund claim shall be denied.

(2) Any person (except as hereinafter provided), who shall use motor fuel for the purpose of operating or propelling any stationary gasoline engine, motorboat, aircraft, or tractor used for agricultural purposes, or for any other purpose except in a motor vehicle operated or intended to be operated upon the public highways of this State, and who shall have paid the tax imposed upon said motor fuel by this Chapter, either directly or indirectly, shall, when such person has fully complied with all provisions of this Article and the rules and regulations promulgated by the Comptroller, be entitled to reimbursement of the tax paid by him less one and one-half per cent (1½%) allowed distributors, wholesalers and jobbers, and retailers under the provisions of this Chapter. Provided, however, no tax refund shall be paid to any person on motor fuel used in any construction or maintenance work which is paid for from any State funds to which motor fuel tax collections are allocated or which is paid jointly from any such State funds and Federal funds, except that when such fuel is used in maintenance of way machines, or other equipment of a railroad, operated upon stationary rails or tracks, then such railroad shall be entitled to a tax refund on such fuel.

(3) Any person desiring to sell to others, or to appropriate for his own use, refund motor fuel as defined herein, shall make separate application to the Comptroller for each separate place of business from which refund motor fuel will be sold, or appropriated for use, for a refund dealer's license to sell or appropriate such product and it shall be unlawful to issue an invoice of exemption covering the sale or appropriation of refund motor fuel without possessing a valid refund dealer's license. The Comptroller shall make such examination of each application for license and the applicant therefor as he deems necessary and if in his opinion the applicant is qualified to perform the duties required of a refund dealer, and is otherwise entitled to the license applied for, a non-transferable license shall be issued by the Comptroller for the place of business named in the application. Each license so issued shall be continuous in force and effect until such time as the Comptroller shall require a renewal thereof, or until such license shall be terminated by the licensee or revoked or suspended by the Comptroller as provided by law.

No refund of the tax paid on any motor fuel shall be granted unless such motor fuel has been purchased from, or appropriated and used by, a refund dealer holding a valid license at the time of such purchase or use, except upon motor fuel exported, lost by accident, or purchased by the United States Government for its exclusive use.

Every refund dealer shall be required to maintain the records required of a dealer in this Chapter, and in addition each such refund dealer shall keep for a period of two (2) years for the inspection of the Comptroller and the Attorney General or their authorized representatives, the original copy of each invoice of exemption issued by such dealer. The license number of the refund dealer shall be inserted in the space provided on each invoice of exemption issued by him.

The Comptroller shall have the authority and it shall be his duty to revoke or suspend the license or licenses of any refund dealer who violates or fails or refuses to comply with any provision of this Chapter or any rule and regulation duly promulgated by the Comptroller. In the event the Comptroller revokes or suspends a license, the said license and all unissued invoices of exemption assigned to the dealer for said license shall be surrendered by the licensee to the Comptroller forthwith.

(4) When motor fuel is ordered or purchased for refund purposes the purchaser or recipient thereof shall state the purpose for which such motor fuel will be used or is intended to be used, and shall request an invoice of exemption which shall be made out by the selling refund dealer at the time of such delivery, or, if the motor fuel is appropriated for use by a refund dealer it shall be made out at the time the motor fuel is appropriated or set aside for refund purposes. The invoice of exemption shall state:

the refund dealer's license number; the date of purchase and the date of delivery; the names and addresses of the purchaser and the selling dealer; the purpose for which such motor fuel will be used or is intended to be used; the number of gallons delivered, or appropriated for use; and any other information the Comptroller may prescribe. No refund shall be allowed unless an invoice of exemption is made out at the time of delivery, except as hereinafter provided. If it be shown by evidence sufficient and satisfactory to the Comptroller that an invoice of exemption has been duly requested by a purchaser of refund motor fuel or his agent at the time of the purchase or delivery and that its failure to be issued was through no fault of the claimant, then the Comptroller may, if he finds the motor fuel has been used for refund purposes, issue warrant in payment of the claim.

The invoice of exemption shall be made out and executed in duplicate by the refund dealer, the duplicate of which shall be delivered to the purchaser of the motor fuel and the original shall be retained by the refund dealer at the place of business designated on his license for the time and in the manner herein provided. Each invoice of exemption shall be signed by the refund dealer and the person who purchases the motor fuel for refund purposes or a duly authorized employee or agent of said dealer or purchaser. But if neither the purchaser of the motor fuel nor an agent is present to sign the invoice of exemption at the time of delivery, the refund dealer shall mail or deliver the duplicate invoice of exemption to the purchaser within seven (7) days after delivery of the motor fuel.

(5) It shall be unlawful for any refund dealer or any employee thereof, to prepare or notarize any claim for refund of tax paid on motor fuel purchased from said refund dealer, or to act in any capacity as agent or employee of any claimant for refund of tax paid on motor fuel purchased from said refund dealer by keeping his books, records, refund claim forms or other documents to be used or intended for use by said claimant in the preparation of his tax refund claim, and the Comptroller shall not approve the payment of any tax refund claim, in whole or in part, in which the claimant has permitted the seller of the motor fuel upon which tax refund is claimed, or any employee of said seller, to prepare, notarize or file his claim for tax refund, or to keep any books, records or documents used in the preparation or filing of said claim. Provided that the Comptroller may, after proper hearing as herein provided, cancel, suspend, or refuse the issuance or reinstatement of the license of any refund dealer who shall prepare or notarize, or who shall permit any employee to prepare or notarize, any claim for refund of tax paid on motor fuel purchased from said refund dealer by the claimant thereof, or who shall keep, or permit any employee to keep, any duplicate invoice of exemption for more than seven (7) days after it has been duly issued to a purchaser of refund motor fuel.

(6) Any person entitled to file claim for tax refund under the terms of this Chapter shall file such claim with the Comptroller on a form prescribed by the Comptroller within six (6) months from the date the motor fuel was delivered to him, or from the date the motor fuel was lost, exported or sold to the United States Government, and no refund of tax shall ever be made where it appears from the invoice of exemption, or from the affidavits or other evidence submitted, that the sale or delivery of the motor fuel was made more than six (6) months prior to the date the refund claim was actually received in the Comptroller's office. The refund claim, with all duplicate invoices of exemption required by law to be issued with the sale of refund motor fuel included as a part of said claim, shall be verified by affidavit of the claimant, or a duly authorized agent of the claimant, and shall show the quantity of refund motor fuel acquired and on hand at the beginning and closing dates of the period covered in the refund claim filed.

If any claimant was not present when the refund motor fuel was used for any purpose, except in machines operated upon stationary rails or tracks, the Comptroller may require such additional affidavits as he may deem necessary to prove the correctness of the claim, from persons who were present and used or supervised the using of the refund motor fuel. The claim for tax refund shall include a statement that the information shown in each duplicate invoice of exemption attached to the tax re-

fund claim is true and correct, and that deductions have been made from the tax refund claim for all motor fuel used on the public highways of Texas and for all motor fuel used or otherwise disposed of in any manner in which a tax refund is not authorized herein. If upon examination, and such other investigation as may be deemed necessary, the Comptroller finds that the claim filed for tax refund is just, and that the taxes claimed have actually been paid by the claimant, then he shall issue warrant due the claimant but no greater amount shall be refunded than has been paid into the State Treasury on any motor fuel, and no warrant shall be paid by the State Treasurer unless presented for payment within two (2) years from the close of the fiscal year in which such warrant was issued, but claim for the payment of such warrant may be presented to the Legislature for appropriation to be made from which said warrant may be paid.

If the refund motor fuel for which tax refund is claimed was used on a farm or ranch or for any agricultural purpose the claim shall show the make, model, and year of manufacture of each tractor, combine and other vehicle in which any refund motor fuel included in the claim was used and the actual work performed showing the different kinds of crops planted and the acreage used or set aside for each crop, during the period of the refund claim, and showing complete information of all other work performed by each such tractor, combine or other vehicle used by the claimant during the period of the claim. The claim shall likewise show the make, kind and horsepower of each stationary engine or motor in which refund motor fuel was used by the claimant and the purposes for which it was used, and if any of the motor fuel included in the claim was used other than in the operation of motors or engines, the claim shall show complete information as to the manner of use and the purpose for which the motor fuel was used. The claim shall also state the number of automobiles, trucks, pickups, and other licensed vehicles operated regularly by the claimant or his employees, on or in connection with the farm, ranch or other agricultural project, and shall show the name and address of the dealer or dealers from whom taxable motor fuel was purchased for use in such licensed vehicles during the period of the claim.

If the refund motor fuel was used in mining, quarrying, drilling, producing, exploring for minerals, or in construction, maintenance, repair work or in other functions similar to the above uses, a distribution schedule, or such other information as the Comptroller may require, shall be attached to and filed as a part of the refund claim which shall show the quantities of motor fuel delivered to and consumed in each vehicle or other unit of equipment used in such work during the period of the claim; provided, however, that no schedules shall be required to show the quantities of motor fuel used in machines operated upon stationary rails or tracks.

If the refund motor fuel was used in aircraft or motorboats, the claim shall show the make and description of such aircraft or motorboat and the quantities of motor fuel used during the period of the refund claim.

If the refund motor fuel was used for cleaning, or dyeing or for industrial or domestic purposes, or was converted into a product other than motor fuel by any manufacturing or blending process, the claim shall show the purpose or purposes for which the motor fuel was used and the quantity used for each separate purpose.

It shall be the duty of every person claiming tax refund to verify the contents of the claim filed and any such person who shall file claim for tax refund on any motor fuel which has been used to propel a motor vehicle, tractor or other conveyance upon the public highways of Texas for any purpose for which a tax refund is not authorized herein, or who shall file any duplicate invoice of exemption in a claim for tax refund on which any date, figure or other material information has been falsified or altered after said duplicate invoice of exemption has been duly issued by the refund dealer and delivered to the claimant, shall forfeit his right to the entire amount of the refund claim filed.

(7) No tax refund shall be paid on motor fuel used in automobiles, trucks, pickups, jeeps, station wagons, buses, or similar motor vehicles designed primarily for highway travel, which travel both on and off the highway except as hereinafter provided. (a) If any such motor vehicles are used entirely for nonhighway purposes except when propelled over the public

highway to obtain repairs, oil changes, or similar mechanical or maintenance services, or when propelled over the public highway for other incidental purposes, or (b) if any such motor vehicles are operated exclusively during the period covered in any refund claim over prescribed courses lying between fixed terminals or bases, in which such vehicles travel the same mileage on the highway on each trip and the same mileage off the highway on each such trip, then in such cases a tax refund claim may be approved for the motor fuel used off the public highway in such vehicles, only when the claimant has kept a complete record of each trip traveled over any part of the public highway showing the date, the highway mileage traveled and the quantity of motor fuel used in each of said vehicles during the period of such travel.

Any claimant who owns or operates more than one farm, ranch or similar tract of land in the same vicinity, may move his farm tractors over the public highway for the purpose of transferring the base of operation of such tractors from one such farm, ranch, or other similar tract of land, to another, without measuring and deducting the refund motor fuel used in such incidental highway travel from his claim for tax refund. Motor fuel consumed in any tractor traveling more than ten (10) miles on the public highway during any one trip, shall not be construed to have been used for incidental purposes and shall not be subject to tax refund thereon, and motor fuel consumed in any tractor used in transporting produce, goods, wares, or other commodities or merchandise over the public highway, or consumed in any tractor used in custom work for others, or consumed in any tractor used upon the public highway for any purpose other than in moving said tractor from its base of operation on one farm, ranch, or other similar tract of land, to another within the limitations described hereinabove, shall be deducted, in the full amount so used, from any claim for tax refund filed by the user of said motor fuel.

A claimant may account for any part of refund motor fuel used upon the public highway, and not eligible for tax refund, by one of the following methods: (a) in motor vehicles which operate exclusively off the public highway except for incidental highway travel as described above, a claimant may drain all refund motor fuel from the fuel tank of any such motor vehicle, tractor or other conveyance before it moves upon the public highway, and then refill it with accurately measured motor fuel, which shall be deducted from the refund motor fuel set up in the claim if said fuel tank is refilled with refund motor fuel, or (b) claimant may, by accurately measuring the mileage any such vehicle, tractor or other conveyance travels upon the public highway, deduct from the refund motor fuel set up in the claim, an amount equal to one-fourth (¼) of a gallon for each mile or fraction of a mile any such motor vehicle, tractor or other conveyance travels on the public highway during the period of the claim, or (c) the Comptroller may prescribe regulations to permit any claimant who operates motor vehicles or other conveyance exclusively over prescribed courses lying between fixed terminals or bases in which the vehicles travel the same mileage on the public highways on each trip and the same mileage off the highway on such trip, to keep a record of the total miles traveled and the total quantity of accurately measured motor fuel consumed by each such vehicle during the period of the claim, from which the claimant may, for tax refund purposes, be permitted to calculate and determine the quantities used off the highway upon a basis of the average miles per gallon traveled by each such vehicle, or (d) if claimant uses any part of refund motor fuel purchased on invoice of exemption in motor vehicles which operate regularly on the public highway in which no part of the motor fuel used is eligible for tax refund, he shall keep a complete record showing the date of each separate use or withdrawal for use, the make and description of the vehicle in which used, and the quantity so used, as measured through any type measuring device or standard measuring container acceptable to the Comptroller, and the quantity so used shall be deducted from the refund motor fuel set up in the claim filed by said claimant, or the Comptroller may in his discretion permit any claimant who has kept proper record to deduct from the refund motor fuel set up in his claim, a quantity equal to the true capacity of the fuel tank of the vehicle using any part of such refund motor fuel on the highway, each time such fuel

tank is filled or serviced with refund motor fuel.

The records prescribed hereinabove shall be kept for a period of six (6) months from the date any claim, to which such records are pertinent, is filed in the Comptroller's office, and no tax refund shall ever be paid in whole or in part when a part of the motor fuel purchased on any invoice of exemption contained in the claim has been used to operate a motor vehicle, tractor or other conveyance of any kind or description upon any public highway for which a tax refund is not authorized herein, unless the claimant has kept for the time and in the manner herein provided a complete record of all such uses for which no tax refund is authorized.

(8) Any person who shall export, or lose by fire or other accident motor fuel in any quantity of one hundred (100) gallons or more upon which the tax imposed herein has been paid, or who shall sell motor fuel upon which the tax has been paid in any quantity to the United States Government, for the exclusive use of said Government, may file claim for refund of the net tax paid to the State in the manner herein provided, or as the Comptroller may direct. Provided, that any bonded distributor holding a valid distributor's permit who establishes proof sufficient and satisfactory to the Comptroller of such export, loss by accident, or sale to the United States Government, may take credit for the net amount of the tax paid to the State on any subsequent monthly report and tax payment made to the Comptroller within six (6) months from the date of such exportation, loss or sale.

(9) The right to receive a tax refund under the provisions of this Chapter shall not be assignable except as hereinafter provided. Any person residing or maintaining a place of business outside of the State of Texas who shall purchase motor fuel in any quantity of not less than one hundred (100) gallons and shall export the entire quantity so purchased out of Texas forthwith, may assign his right to claim the tax refund to the licensed distributor from whom such motor fuel was purchased, or to any licensed distributor who has paid the tax on such motor fuel either directly or through another licensed and bonded distributor in Texas. When such distributor has secured the proof of export required by the Comptroller, he may file claim for refund of the tax paid on the motor fuel so exported, or, such distributor may take credit for an amount equal to said tax refund on any monthly report and tax payment filed with the Comptroller within six (6) months from the date the motor fuel was exported.

(10) For the purpose of enabling the Comptroller, and his authorized representatives, to ascertain whether or not refund motor fuel has been or is being used for the purposes for which it was purchased, they shall have the right to inspect the premises and the storage thereon where any motor fuel purchased on an invoice of exemption is stored or used and to examine any books and records kept by such purchaser, pertaining to such motor fuel, and it shall be a violation of the law for any person who has purchased or received motor fuel upon which an invoice of exemption has been issued to refuse permission to make such inspection or examination. It is further provided that the refusal of any such person to permit the inspection and examination described hereinabove shall constitute a waiver of all rights to receive a tax refund on any claim under investigation.

(11) Any person who violates or fails to comply with any provision of this Article, or any rule and regulation duly promulgated by the Comptroller for the enforcement of the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200). Provided, however, that the penalties prescribed above shall not apply to offenses punishable under Art. 9.27 of this Chapter, but the said Art. 9.27 shall apply and control over such offenses. In addition to all other penalties prescribed in this Article, it is herein provided that a conviction for a violation of any provision of this Article, shall for the first offense, forfeit the right of said person to receive a tax refund for a period of six (6) months from the date of said conviction, and for each subsequent offense, shall forfeit the right of said person to receive a tax refund for a period of one (1) year from the date of said conviction.

(12) Concurrently with the issuance of a refund dealer's license the

Comptroller shall issue and charge to the account of the licensee, a book or books of invoices of exemptions which invoices shall be printed in duplicate sets and serially numbered. The Comptroller shall keep a record of the number of the books and their serial numbers issued to each refund dealer who shall be liable for a penalty in the amount of five dollars ($5) for each book of invoices of exemption received by him for which he cannot properly account as hereinafter provided. Whenever a representative of the Comptroller audits the motor fuel records of a refund dealer, or whenever a refund dealer places a reorder for a book or books of invoices of exemption, such dealer shall prepare a written record showing the serial numbers of all books not previously accounted for and if such record does not account for each book previously issued to said refund dealer which has not been previously accounted for, the refund dealer shall be given thirty (30) days notice in writing to produce any missing book or to show that it has been used to cover sales of refund motor fuel made by said refund dealer. If the missing book or books are not accounted for within thirty (30) days from the date of said notice the refund dealer shall forfeit to the State of Texas as a penalty the sum of five dollars ($5) for each book unaccounted for, which shall be paid to the Comptroller and allocated to the same funds to which the motor fuel taxes collected hereunder are apportioned. No further books of invoices of exemption shall be issued to any refund dealer who has incurred the penalty described hereinabove until said penalty has been paid. Any invoices of exemption which become mutilated or unusable shall be returned to the Comptroller by the refund dealer for credit to his account. The books of invoices of exemption shall not be transferable or assignable by such refund dealer unless such transfer or assignment is authorized by the Comptroller.

If any duplicate invoice of exemption issued to a purchaser is lost or destroyed said purchaser may make application to the Comptroller for forms to be issued and used in lieu of each lost duplicate.

The invoices of exemption bound in book form shall be furnished by the State of Texas, free of cost, to the refund dealer.

(13) All the moneys paid into the Treasury under the provisions of this Chapter, except the filing fees provided herein, shall be set aside in a special fund to be known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 25th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on sale of motor fuel during the preceding month, upon which a refund may be due, and shall certify to the Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds, and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant has lost or loses, or for any reason failed or fails to receive warrant after warrant was or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas of 1925.

(14) So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided for herein, and if a specific amount be necessary then there is hereby appropriated and set aside for said purpose the sum of Two Hundred Thousand Dollars ($200,000), or so much thereof as may be necessary. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one and one-half per cent (1½%) deducted originally by the distributor upon the first sale or distribution of the motor fuel shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such

refund, which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of this Article, as well as for the payment of expenses in furnishing the form of invoice of exemption and other forms provided for herein, and the same is hereby appropriated for such person. All such filing fees shall be paid into the State Treasury and shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

Art. 9.14. Transit Companies.

Provided that in lieu of the tax levied by Subsection (a) of Section 2 of this Article, there shall be and is hereby levied and imposed an excise tax of Four Cents (4¢) per gallon or fractional part thereof upon the first sale, distribution or use of motor fuel in this State which said tax shall be applicable only when such motor fuel is used or consumed, or is to be used or consumed for the propulsion of transit vehicles owned by a transit company (a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (b) which holds a franchise from such city or town; (c) whose rates are regulated by such city or town; and (d) which pays to such city or town a tax on its gross receipts. Said taxes shall be collected and paid in the same manner as the taxes levied by Subsection (a) of Section 2 of this Article.

Where the first sale, distribution or use of motor fuel in this State is to or by a transit company, and such company shall furnish to the distributor or seller, or to the Comptroller, as the case may be, an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it will use such motor fuel only in the operation of its transit vehicles, the distributor or seller, or the Comptroller, as the case may be, shall collect from such transit company only the taxes levied herein.

Where the distributor or seller has collected the tax levied by Section 2(a) of this Article on motor fuel thereafter used by a transit company, such transit company may obtain a refund in the amount of One Cent (1¢) per gallon or fractional part thereof by conforming to the refund procedure set forth in Section 13 of this Article, and by furnishing to the Comptroller an affidavit to the effect that it possesses the aforementioned four (4) characteristics and that it has used such motor fuel only in the operation of its transit vehicles.

Art. 9.15. Inspection.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State and the amount of said tax accruing and due for motor fuel used by a distributor, refinery, dealer, user, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum or natural gas, or their products or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where motor fuel, crude petroleum, natural gas, or any other derivatives or condensates of crude petroleum, natural gas, or their products are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept, and any and all books and records that may be kept incident to the conduct of the business of said distributor, refinery, or other person, dealing in or possessing motor fuel, crude oil, or other derivatives or condensates of crude petroleum, natural gas or their products. The said authorized officers shall also have the right, as an incident to determining said tax liability or whether a tax liability has been incurred, to examine and gauge or measure the contents of all storage tanks, containers, and other property or equipment, and to take samples of any and all products stored therein. For the foregoing purposes, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Art. 9.16. Permits; Cancellation, Renewal.

The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any motor fuel distributor's permit, any user's permit, or any refund dealer's license, as provided under the terms of this Chapter, to any person who has violated or has failed to comply with any

duly promulgated rule and regulation of the Comptroller, or any of the provisions of this Chapter, including any of the following offenses, which may be applicable to such permittee or licensee: (a) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller, from any report filed with said Comptroller or from any books or records required to be kept or any books or records authorized to be audited by the provisions of this Chapter; (b) failure to file any return or report required under the provisions of this Chapter; (c) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Chapter; (d) failure to keep any books and records for the period and in the manner required herein to be kept; (e) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (f) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (g) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, examine, measure, gauge, and take samples from any truck, tank, pump, or container said persons are authorized to inspect, examine, measure, gauge, and take samples from, under the provisions of this Chapter; (h) the forging or falsifying of any invoice of exemption herein provided, or the making of any false statement in any claim for refund filed with the Comptroller under the provisions of this Chapter; (i) the engaging in any business requiring a permit or license under the provisions of this Chapter, without obtaining and possessing a valid permit or license.

Before any permit or license may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or license, or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, or at any district office maintained by the Comptroller, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail or certified mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller, to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearings or opportunity to be heard, the permit or license is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Article, shall become due and payable concurrently with the cancellation of such permit or license, and the permittee or licensee shall forthwith make a report covering the period of time not covered by preceding reports filed by said permittee or licensee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use, or distribution of motor fuel in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit or license.

An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit or license may be taken to the District Court of Travis County, Texas, by the aggrieved permittee, licensee, or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceeding shall have precedence over all

other causes of a different nature; (3) trial of all such cases shall commence within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his duly authorized representative, may be suspended or modified by the Court pending a trial on the merits.

Art. 9.17. Reports as Evidence.

(1) If any distributor fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Chapter, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such distributor or his representative, or a certified copy thereof certified to by the Comptroller or his Chief Clerk, showing the amount of motor fuel sold by such distributor or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State, or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said distributor, when signed and sworn to by such representative as being made from said books and records of said distributor or from any books or records of any person from whom such distributor has bought, received, delivered, or sold motor fuel, crude oil, or the derivates of crude oil, or natural gas, or from the books and records of any transportation agency, who has transported any of said products, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon the trial, by evidence adduced by said distributor.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond, or other instrument, referred to in this Chapter, and that the same had been adopted, promulgated and published or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption, or publication, and without further proof of its contents, and the same provisions shall apply to any bond or other instrument referred to herein.

Art. 9.18. Civil Penalties.

If any person affected by this Chapter (a) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter, or (b) shall fail to keep for the period of time provided herein any books or records required, or (c) shall make false entry or fail to make entry in the books and records required to be kept, or (d) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (e) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives to inspect and examine any books or records, required to be kept, or any other pertinent books or records, incident to the conduct of his business that may be kept, or (f) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (g) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where motor fuel, crude oil, natural gas, or any derivative or condensate thereof are produced, made, prepared, stored, transported, sold, or offered for sale or exchange, or (h) shall refuse permission to said persons to examine, gauge, or measure the contents of any storage tanks, vehicle tanks, pumps, or other containers, or to take samples therefrom, or (i) shall refuse permission to said persons to examine and audit any books, records, and gauge reports kept in connection with or incidental to said equipment, or (j) shall refuse to stop and permit the inspection and examination of any motor vehicle transporting motor fuel upon demand of any person authorized to inspect the same, or (k) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed, or (l) shall forge or falsify any invoice of exemption herein provided, or (m) shall make any false statement in any claim for refund of motor fuel taxes as to any material fact required to be given, or if any such person (n) shall fail or

refuse to comply with any provision of this Chapter or shall violate the same, or (o) shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas, as a penalty the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any distributor does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said distributor within the time prescribed by law, said distributor shall forfeit two per cent (2%) of the amount due; and if said taxes are not remitted or paid within ten (10) days from the date the Comptroller gives such distributor notice of the amount due in writing directed to the address shown in the application for permit filed by said distributor, an additional eight per cent (8%) shall be forfeited. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Article, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Provided further, that before any restraining order or injunction shall be granted against the Comptroller, or his authorized representatives, to restrain or enjoin the collection of any taxes, penalties, and interest imposed by this Chapter, the applicant therefor shall pay into the suspense account of the State Treasurer all such taxes, penalties, and interest showing to be due and owing to the State by any audit made by the Comptroller, or his duly authorized representative, when said audit has been certified to by the Comptroller or his Chief Clerk, and has been signed under oath by said authorized representative as having been made from the books and records of said applicant, whether or not required to be kept under the provision of this Article, or from the books and records of any person from whom such applicant has purchased, received, delivered, or sold motor fuel, or from the books and records of any transportation agency, which has transported such products to or from said applicant. Provided, however, that said applicant may, in lieu of paying said taxes, penalties, and interest into the suspense account of the State Treasurer, file with said Treasurer a good and sufficient surety bond in the amount and form and under the conditions provided in Section 1, Chapter 310, Acts of the Regular Session of the Forty-fifth Legislature, and the provisions of said Section 1, Chapter 310, are hereby made applicable to any suit filed to restrain or enjoin the collection of any such taxes, penalties, and interest imposed by this Chapter. Any proceedings to enjoin the collection of such taxes, penalties, and interest, or the enforcement of any provision of this Chapter shall be in a court of competent jurisdiction in Travis County, Texas.

Art. 9.19. Comptroller's Authority.

(1) For the purpose of enforcing the collection of the tax levied by this Chapter, and to enable the Comptroller to ascertain whether or not the tax has been paid or accounted for on all motor fuel and other products which can be used as motor fuel, which may be transported in this State, the said Comptroller and his authorized representatives are hereby vested with the power and authority to measure, calibrate and determine the capacity in gallons of any vehicle tank or other container in which motor fuel, blending materials, liquefied gases and liquid fuels are transported. The Comptroller is hereby given the power and authority to promulgate and enforce any rules and regulations, which he may deem necessary to the best enforcement of the provisions of this Article.

All vehicle tanks, and all devices designed to be attached thereto and used in connection therewith, and all other containers in which any of the foregoing products are transported, shall be of such design and construction that they do not facilitate the perpetration of fraud. Each compartment of said vehicle tank or other container shall be conspicuously marked on, or immediately under, the dome

thereof with a designating figure, or letter and the capacity of said compartment and each delivery faucet shall be marked with the capacity and a corresponding figure or letter to indicate the compartment of which it is the outlet. In addition, the total capacity of all compartments of each vehicle tank shall be conspicuously marked in letters of not less than two (2) inches in height on the rear of each such vehicle tank. The Comptroller's test or certificate number shall also be printed on the rear of each vehicle tank. When a motor vehicle carrying a vehicle tank is equipped with side tanks or other auxiliary tanks or compartments, such additional tanks and compartments shall comply with all of the specifications applicable to vehicle tanks. No vehicle shall transport motor fuel upon the public highways of this State with connection from any cargo tank or container to the carburetor for the purpose of withdrawing motor fuel from said cargo tank or container, and fuel tanks, including auxiliary fuel tanks shall be separate and apart from the cargo tank, with no connection by pipe, tube, valve or otherwise. It shall be a violation of this Article to sell or distribute motor fuel from any fuel tank or auxiliary fuel tank connected with the carburetor of any motor vehicle or to withdraw said motor fuel from any such fuel tank or auxiliary fuel tank for the purpose of sale. The measurement certificate shall be carried with the vehicle tank for which it is issued and the Comptroller or his authorized representatives shall have the authority to impound and hold any truck, for a period of not to exceed seventy-two (72) hours, until said certificate is produced. The owner of any vehicle tank or other container tested and measured may be required to pay a reasonable fee to any city or any person for the water used in the measurement of such tank or container.

If any vehicle tank or other container shall, after having been tested, become damaged, repaired or modified in any way which might affect the accuracy or measurement of its receipts and deliveries, it shall not again be used for the sale or transportation of motor fuel, blending materials, liquefied gases and liquid fuels until officially reinspected, and, if deemed necessary, retested and remeasured.

(2) From and after the effective date of this Chapter, and before using any vehicle tank or other containers in the transportation of motor fuel, blending materials, liquefied gases and liquid fuels, except in quantities of thirty (30) gallons or less in the fuel tank feeding the carburetor of the motor vehicle, every person shall have every such vehicle tank or other containers, subject to the provision of this Article, tested, measured and calibrated by a representative of the Comptroller and shall obtain a measurement certificate from said Comptroller, showing the capacity of each such vehicle tank and other container. Provided, however, that the Comptroller may, at his discretion, accept any weights and measures certificate issued by the Division of Weights and Measures of the Department of Agriculture, State of Texas, without retesting or remeasuring said vehicle tank or containers.

It is further provided that carriers-for-hire operating under valid permits or certificates of convenience and necessity issued by the Railroad Commission of the State of Texas, and not engaged in transporting motor fuel or other taxable petroleum products for the purpose of sale or distribution for sale, and persons operating motor buses under franchises or licenses issued by municipalities, shall not be required to produce for inspection or measurement or to have tested, measured and calibrated, any fuel tank with a capacity not exceeding one hundred (100) gallons, connected to and feeding the carburetor of any motor vehicle owned or operated by said carriers or said persons, when such fuel tank is used exclusively for furnishing fuel to propel the motor or engine of said motor vehicles, and none of the contents thereof is sold or transported for sale, distribution or delivery to any other person. Provided, however, that this exemption shall not apply to the fuel tank of any motor vehicle used to transport motor fuel or other taxable petroleum products for sale or distribution for sale.

All authorized representatives of the Comptroller shall have the power and authority to inspect, test, measure, or remeasure vehicle tanks and other containers used to transport motor fuel, blending materials, liquefied gases and other liquid fuels, or containers from which said products are sold, or to correct, condemn or mark

"out of order" any such vehicle tanks or containers which may be so constructed as to prevent accurate measurement or which are not constructed in conformity with the provisions of this Act or the rules and regulations promulgated hereunder.

(3) Whoever shall remove, obliterate, or change any measurement certificate, tag, marking or device made by any authorized representative of the Comptroller, or placed upon any vehicle tank or other container, or shall refuse or neglect to produce for inspection and measurement, at the time and place fixed by the Comptroller, not to exceed one hundred (100) miles from the point which is the customary base of operation of such truck, any vehicle tank or other container in his possession or under his control, or shall transport such products in any vehicle tank or other container which has been condemned or tagged "out of order" by any authorized representative of the Comptroller, or whoever shall fail to comply with any provision of this Article or any reasonable rule and regulation promulgated under the provisions of this Article, or shall violate the same, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

Art. 9.20. Authority to Stop and Examine.

(1) In order to enforce the provisions of this Chapter, the Comptroller, his authorized representatives, or any Highway Patrolman, Sheriff, Constable, and their deputies, and all other peace officers are empowered to stop any motor vehicle which might appear to be transporting motor fuel or other derivatives of crude petroleum or natural gas, or their products, as cargo, for the purpose of examining the manifest required to be carried, for examination of the commodity in transit, to take samples of the cargo, and for such other investigations as could reasonably be made to determine whether the cargo was motor fuel or other derivatives of crude petroleum, natural gas, or their products, and whether the manifest indicates that the State tax was a part of the consideration involved in the sale or distribution of any motor fuel carried. If upon said examination, it is found that the driver of any such motor vehicle transporting motor fuel does not possess or refuses to exhibit a manifest required herein, or if said manifest carried is false or incomplete, said authorized officers shall impound and take possession of the said motor vehicle and its contents, and unless proof is produced within seventy-two (72) hours from the beginning of such impoundment that the motor fuel has been sold with the State tax as a part of the consideration therefor, said motor vehicle and its contents shall be delivered to the Comptroller or his authorized representatives for forfeiture and sale as hereinafter provided.

(2) All motor fuel on which taxes are imposed by this Chapter, which shall be found in the possession, or custody, or within the control of any person for the purpose of being sold, transported, removed, or used by him in fraud of this Motor Fuel Tax Law, and all motor fuel which is removed or is deposited, stored, or concealed in any place with intent to avoid payments of taxes levied thereon, and any automobile, truck, tank truck, boat, conveyance, or other vehicle whatsoever used in the removal or transportation of such motor fuel for such purposes, and all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for such purpose found in the place, building, or vehicle where such motor fuel is found may be seized by the Comptroller, and the same shall be from the time of such seizure forfeited to the State of Texas, and a proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain such seizure and declare and perfect said forfeiture as hereinafter provided. All such motor fuel, vehicles and property seized as aforesaid, remaining in the possession or custody of the Comptroller, sheriff, or other officer for forfeiture or other disposition as provided by law, shall be deemed to be in the custody of law and irrepleviable for a period of thirty (30) days, after which time, if no suit has been filed or summary proceedings begun for forfeiture as hereinafter provided, such property shall be subject to replevy.

The Comptroller, when making the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place or person where and from whom such

property was seized, and an inventory of same, and appraisement thereof at the usual and ordinary retail price of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the Comptroller and shall be open to public inspection.

The Attorney General, or the District or County Attorney of the county of seizure, shall, at the request of the Comptroller, file in the county and court aforesaid forfeiture proceeding in the name of the State of Texas as plaintiff, and against the owner or person in possession as defendant, if known, and if unknown, then against said property seized and sought to be forfeited. Upon the filing of said proceeding, the Clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two (2) days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the Sheriff of said county. In the event the defendant in said proceeding is a nonresident of the State or his residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the Comptroller to this effect, notice or process shall be served or published in the mode and manner provided by existing Statutes for service of citation upon nonresidents or unknown defendants, or defendants whose residence is unknown; provided, however, such proceedings may be heard at any time after ten (10) days from completion of the service of such process or the first publication of such notice. And in such cases, the court shall appoint an attorney to represent such defendant, who shall have the rights, duties, and compensation as provided by existing Statutes in cases of attorneys appointed to represent nonresidents and unknown defendants.

In the event final judgment is rendered in the forfeiture proceeding aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale thereof to the highest bidder by the Sheriff at public auction in the county of seizure, after ten (10) days' notice by advertisement at least twice in any legal publication of such county, and the proceeds of such sale, less expenses of seizure and court costs, shall be paid into the State Treasury, and, after crediting the motor fuel tax fund with the tax, penalties and interest due, the balance of said proceeds, if any, shall be allocated as the Motor Fuel Tax is herein allocated. In the event the District or County Attorneys file and prosecute such cases, a fee of Fifteen Dollars ($15) shall be paid to such officers in addition to all other fees allowed by law, which fee shall be collected as court costs out of the proceeds of such sale.

(3) In lieu of the forfeiture proceeding aforesaid, the Comptroller may elect to sell the motor fuel and property seized by him in cases where such property appears by the report or receipt of the officer seizing same to be of the appraised value of Five Hundred Dollars ($500), or less, by the following summary proceedings:

(a) The Comptroller or his authorized representatives shall notify the person from whom such property was seized either in person or by registered or certified mail if said person's address is known and if unknown the Comptroller shall publish a notice in some newspaper of the county where the seizure was made, describing the property seized and stating the time, place, and cause of their seizure, and requiring any person claiming such property, or any interest therein or thereto, to appear and make such claim within fifteen (15) days from the date of such publication of such notice.

(b) Any person claiming such property so seized, or any interest therein or thereto, within the time specified in such notice, may file with the said Comptroller his claim, stating his interest in the property seized, and may execute a bond to the State of Texas in the penal sum of Two Hundred and Fifty Dollars ($250), with sureties to be approved by said Comptroller, conditioned that, in case of the establishment of forfeiture of the articles so seized, by final judgment in a court of competent jurisdiction as hereinabove provided, the obligors shall pay all the costs and expenses of the proceeding to obtain such forfeiture; and upon the delivery of such bond to the Comptroller, he shall transmit the

same with a certified copy of the report of receipt of the property seized, filed, in his office, to the Attorney General, or the County or District Attorney of the county of seizure, and forfeiture proceedings shall be instituted and prosecuted thereon in the court of competent jurisdiction as provided by law.

(c) If no claim is interposed and no bond is given within the time above specified, the Comptroller shall give ten (10) days' notice of a sale of the property under seizure by publication two (2) times in a newspaper of the county of seizure, and, at the time and place specified in such notice, shall sell the property so seized at public auction, and after deducting expenses of seizure, appraisement, custody, and sale, he shall, after crediting the Motor Fuel Tax Fund with the tax, penalties, and interest due, deposit the balance of such proceeds, if any, in the State Treasury, which shall be allocated to the funds to which the tax levied by this Chapter is apportioned.

Art. 9.21. Seizure Not Defense.

The seizure, forfeiture, and sale of motor fuel and any other property named hereinabove under the terms and conditions hereinabove set out, and whether with or without court action, shall not be or constitute any defense or justification to the person owning or having control or possession of such property from criminal prosecution for any act or omission made an offense hereunder, or operate to exempt or relieve said person from liability to the State to pay penalties provided by this law, with or without suit therefor.

Art. 9.22. Waiver.

(1) Authority is hereby conferred upon the Comptroller to waive any proceedings for the forfeiture of any of the property seized under the provisions of this Chapter, or any part thereof, provided that the offender shall pay into the State Treasury through the Comptroller a penalty equal to twice the amount of the tax due on the motor fuel plus all other costs in connection with such seizure. A record of all such settlements and waivers of forfeiture shall be kept by the Comptroller and shall be open to public inspection.

(2) Provided further, that if the Comptroller finds from examination of records or from other investigation that motor fuel has been sold, delivered, or used for any taxable purpose without taxes levied by this Chapter having been paid to the State of Texas, or accounted for by a licensed distributor, he shall have the power to require the person making such taxable sale, delivery or use of such motor fuel to pay into the State Treasury, through the Comptroller the taxes due and a penalty equal to the amount of such taxes due. If any person who has made any such taxable sale or taxable use is unable to furnish sufficient evidence to the Comptroller that said taxes have been paid, or accounted for by a licensed distributor, the prima facie presumption shall arise that such motor fuel was sold, delivered, or used without said taxes having been paid.

Art. 9.23. Rules and Regulations.

It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, costs, and interest due or that may become due under the provisions of this Chapter, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. Said Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this Chapter or the Constitutions of this State or the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues levied hereunder.

No rule or regulation for which a penalty is prescribed by the Comptroller shall be adopted by the Comptroller except after notice and hearing. Notice of such hearing shall be given by publication one time in three (3) newspapers of general circulation in this State. Such notice shall specify the date and place of hearing and the subject matter of the proposed rule or regulation and shall constitute sufficient notice to all parties. The date of hearing shall be not less than ten (10) days from the date of publication of notice. At such hearing any person, either by himself or by an attorney, may present relevant facts either in support or opposition thereto. The Comptroller shall, upon a finding of facts, have the authority and power to adopt, modify, nullify, or alter such rules and regulations.

Upon the final adoption of any rule or regulation, the Comptroller shall cause the same to be published one

time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date of publication, unless a subsequent date is specified therein. The publication thereof shall be sufficient notice to all parties. Any person who violates any valid rule and regulation or any provision thereof shall be subject to the penalty as prescribed in Article 9.26 of this Chapter.

Art. 9.24. Comptroller May Act.

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Chapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any book, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, said Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents to the District Court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Chapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of funds appropriated for court costs to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller.

Art. 9.25. Enforcement Fund, Allocation of Revenue.

Before any diversion or allocation of the motor fuel tax collected under the provisions of this Chapter is made, one per cent (1%) of the gross amount of said tax shall be set aside in the State Treasury in a special fund, subject to the use of the Comptroller in the administration and enforcement of the provisions of this Chapter, and so much of said proceeds of one per cent (1%) of the motor fuel tax paid monthly as may be needed in such administration and enforcement, be and is hereby appropriated for said purpose. Any unexpended portion of said fund so specified shall, at the end of each fiscal year, revert to the respective funds in the proper proportions to which the Motor Fuel Tax Fund levied by this Chapter is allocated at the end of each fiscal year.

Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, allocate and deposit the remainder of the taxes collected under the provisions of this Chapter, in the proportions as follows: One-fourth (¼) of such tax shall go to, and be placed to the credit of, the Available Free School Fund;

one-half (½) of such tax shall go to and be placed to the credit of the State Highway Fund for the construction and maintenance of the State Road System under existing laws; and from the remaining one-fourth (¼) of such tax the Comptroller shall: (1) place to the credit of the County and Road District Highway Fund an amount determined by the Board of County and District Road Indebtedness and certified by the Board to the Comptroller of Public Accounts prior to August 31 each year, for the fiscal year beginning September 1 each year, to be required in addition to any and all funds already on hand, for the payment by the Board of the principal, interest and sinking fund requirements for each year, on all bonds, warrants or other legal evidences of indebtedness heretofore issued by counties or defined road districts of this State, which mature on or after January 1, 1933, in so far as amounts of same were issued for and proceeds have been actually expended in the construction of roads that constituted and comprised a part of the system of designated State highways on September 17, 1932, or which subsequent to such date and prior to January 2, 1939, have been designated a part of the System of State Highways and declared by the Board of County and District Road Indebtedness prior to January 2, 1945, to be eligible to participate in the distribution of the moneys in the County and Road District Highway Fund under the provisions of existing laws; (2) for the fiscal year beginning September 1, 1951, and each fiscal year thereafter, the Comptroller shall place to the credit of the Fund known as the County and Road District Highway Fund the sum of Seven Million, Three Hundred Thousand Dollars ($7,300,000), said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be allocated by the Board of County and District Road Indebtedness to all the counties of Texas not later than September 15 of each year, through the Lateral Road Account, as provided under subsection (h) of Section 6 of Chapter 324 of the General and Special Laws of the Forty-eighth Legislature, Regular Session, 1943, as amended by Section 1 of Chapter 319, Acts of the Fiftieth Legislature, 1947; and (3) the Comptroller shall place to the credit of the State Highway Fund the remainder of such one-fourth (¼) of such tax, said amount to be provided on the basis of equal monthly payments, payable on the first day of each calendar month, which sum shall be used by the State Highway Department for the construction and improvement of Farm to Market Roads having the same general characteristics as the roads eligible for construction under subsection 4b of Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the Forty-seventh Legislature, as amended.

Art. 9.26. Misdemeanor Penalties.

If any person (a) shall refuse to permit the Comptroller, the Attorney General, or their authorized representatives, to inspect, examine and audit any books and records required to be kept by a distributor, refund dealer, or dealer, or (b) shall refuse to permit said person to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered or used, or (c) shall refuse to permit said persons to measure or gauge the contents of all storage tanks, pumps or containers on said premises, or take samples therefrom, or (d) shall conceal any motor fuel for the purpose of violating any provision of this Chapter, or (e) shall transport motor fuel in a motor vehicle with pipe or tube connection from the cargo tank or container to the carburetor of said motor vehicle, or (f) shall sell or distribute motor fuel from a fuel tank or auxiliary fuel tank with a direct or indirect connection to the carburetor of a motor vehicle, or (g) if any dealer shall fail or refuse to keep in Texas for a period of time required by law, any books or records required to be kept by said person, or (h) if any dealer, or the agent or employee of any dealer, shall knowingly make any false entry or fail to make entry in the books and records required to be kept by a dealer, or (i) if any refund dealer shall refuse to surrender his refund dealer's license to the Comptroller upon suspension or cancellation of said license, or (j) shall refuse to surrender to the Comptroller all unissued invoices of exemption upon the suspension or cancellation of said license, or if any person (k) shall fail or refuse to comply with any provi-

sion of this Chapter, or shall violate the same, or (l) shall fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller, or shall violate the same, said person or persons shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

Art. 9.27. Felony Penalties.

(a) Whoever shall knowingly transport in any manner any motor fuel, casinghead gasoline, drip gasoline, natural gasoline, or absorption gasoline, under a false manifest, or (b) whoever shall knowingly transport any of the foregoing named commodities in any quantity, for which a manifest is required to be carried, without then and there possessing or exhibiting upon demand by an authorized officer, a manifest, containing all the information required to be shown thereon, or (c) while transporting any of the foregoing named commodities, shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized hereunder to stop said motor vehicle, or (d) shall refuse to surrender his motor vehicle and cargo for impoundment when ordered to do so by a person authorized hereunder to impound said motor vehicle and cargo, or (e) whoever shall make a first sale, distribution, or use of motor fuel, upon which a tax is required to be paid by law, without then and there holding a valid distributor's permit issued by the Comptroller, or (f) whoever as a distributor shall fail or refuse to make and deliver to the Comptroller a report containing the information required by law to be made and delivered to said Comptroller, or (g) whoever shall knowingly make and deliver to the Comptroller any false or incomplete report required by law to be made and delivered to the Comptroller by a distributor, or (h) whoever as a distributor shall fail or refuse to keep in Texas for the period of time required by law any books and records required to be kept by a distributor, or (i) whoever shall knowingly make any false entry or shall wilfully fail to make entry in any books and records required to be kept by a distributor, or (j) whoever shall wilfully forge or falsify any invoice of exemption prescribed by law, or (k) whoever shall wilfully and knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State Penitentiary for not more than five (5) years or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a felony conviction for any of the above named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a distributor of motor fuel, or as a refund dealer, for a period of two (2) years from the date of such conviction.

Provided, that if any penalties prescribed elsewhere in this Chapter shall overlap as to offenses which are also punishable under Art. 9.27 of this Chapter, then the penalties prescribed in the said Art. 9.27 shall apply and control over all such penalties. Venue of prosecution under Art. 9.27 shall be in Travis County, Texas, or in the county in which the offense occurred.

CHAPTER 10
SPECIAL FUELS TAX

Art. 10.01. Short Title.

This Chapter, and any amendments thereto, shall be known and may be cited as the "Special Fuels Tax Law."

Art. 10.02. Definitions.

The following words and terms, as used in this Chapter, are defined as follows unless the context clearly indicates a different meaning:

(1) "Special fuels" means all combustible gases and liquids suitable for the generation of power for the propulsion of motor vehicles, including "liquefied gas" and "distillate fuel" as defined in (2) and (3) hereinbelow, except that the term "special fuels" shall not include "motor fuel" as defined in the motor fuel tax law by Chapter 9, Art. 9.01 of this Act.

(2) "Liquefied gas" means all combustible gases which exist in the gaseous state at sixty (60) degrees Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute.

(3) "Distillate fuel" means diesel fuel, kerosene, and any other liquid

suitable for the generation of power for the propulsion of motor vehicles, except liquefied gas as defined in (2) above and motor fuel as defined in Art. 9.01 of Chapter 9 of this Act.

(4) "Bulk" as used in connection with the sale or handling of special fuels, means a quantity of distillate fuel in excess of five (5) gallons, and any quantity of liquefied gas other than in cylinders containing one hundred (100) pounds or less.

(5) "Motor vehicle" means any automobile, truck, pickup, jeep, station wagon, bus or similar vehicle, propelled by a motor or internal combustion engine upon the public highways; provided, that any tractor, combine, or other vehicle or machine designed primarily for use off the public highways shall be deemed to be a motor vehicle when propelled or serviced with special fuels for propulsion, upon the public highways.

(6) "Supplier" means any person who delivers special fuels to dealers or users (including locations of the supplier) for redelivery by them into the fuel supply tanks of motor vehicles.

(7) "Dealer" means and includes every person who sells any special fuels at retail and delivers such special fuels into the fuel supply tanks of motor vehicles.

(8) "User" means and includes every person who delivers any special fuels into the fuel supply tanks of motor vehicles owned or operated by him. "User" also means any person who imports special fuels into this State in the fuel supply tanks of motor vehicles owned or operated by him.

(9) "Person" means every individual, firm, association, joint stock company, syndicate, partnership, co-partnership, corporation (public, private, or municipal), trustee, agency or receiver.

(10) "Public highway" means and includes every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel including toll roads, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(11) "Comptroller" means Comptroller of Public Accounts of the State of Texas.

In each case the singular of a word used in this Chapter shall be deemed to embrace the plural, and the plural shall embrace the singular.

Art. 10.03. Levy of Tax.

(1) An excise tax is hereby levied and imposed upon the use of special fuels for the propulsion of motor vehicles upon the public highways of this State at rates of Five Cents (5¢) per gallon of liquefied gas, and Six and Five-tenths Cents (6.5¢) per gallon of distillate fuel, so used, which said tax or taxes shall be collected, reported, and paid as hereinafter provided.

(2) Provided, however, that in lieu of the tax rates specified and levied hereinabove an excise tax shall be and is hereby levied and imposed at Four Cents (4¢) per gallon of liquefied gas and Six Cents (6¢) per gallon of distillate fuel used for the propulsion of buses owned by a transit company (a) the greater portion of whose business is the transportation of persons within the limits of an incorporated city or town in conveyances designed to transport twelve (12) or more passengers; (b) which holds a franchise from such city or town; (c) whose rates are regulated by such city or town; and (d) which pays to such city or town a tax on its gross receipts, or any municipally owned and operated transit company.

(3) Every supplier shall collect the tax, at the rate imposed, on each gallon of special fuels delivered to nonbonded dealers or users and shall report and pay to this State the tax so collected. Provided, however, other deliveries of special fuels may be made without collecting the tax otherwise imposed when delivery is made by the supplier into separate storage facilities maintained by dealers when such storage facilities are physically separated from motor vehicle fueling units and prominently labeled "NOT FOR HIGHWAY USE" in plain view of the public and in letters of not less than two (2) inches in height.

(4) Every dealer shall collect the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply tanks of motor vehicles and shall report and pay to this State the tax so collected, unless said tax has been paid to a licensed supplier.

(5) Every user shall report and pay to this State the tax, at the rate imposed, on each gallon of special fuels delivered by him into the fuel supply

tanks of motor vehicles, unless said tax has been paid to a licensed supplier. Every user shall also report and pay the tax, at the rate imposed, on each gallon of special fuels imported into this State in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of such motor vehicles upon the public highways of this State. No permit shall be required and no tax shall be paid on special fuels imported in the fuel supply tanks of any motor vehicle when said fuel supply tanks, and any additional containers, have an aggregate capacity of not more than thirty (30) gallons, and if said motor vehicle is not operated by said user for hire, or compensation, or for commercial purposes.

The delivery of special fuels into the fuel supply tanks of tractors, combines or other vehicles or machines designed primarily for non-highway travel for propelling such vehicles or machines over the public highways from one job of custom work performed for others for hire or compensation to another such job, or in hauling goods, wares, merchandise or other commodities over the public highways shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles.

(6) Every licensed supplier shall deduct the tax on one per cent (1%) of the taxable gallons of special fuels sold, delivered or used by him in the payment of taxes to the State of Texas, which deduction or allowance shall be apportioned among the supplier and dealers who purchase said taxable fuels as follows:

Every supplier who makes a bulk sale of special fuels to a dealer, upon which sale the tax is required to be collected, shall set out the tax separately on the invoice and deduct one-half of one per cent (½ of 1%) of the amount of such tax and the balance shall be the amount of tax the supplier is entitled to collect from such dealer; any dealer or user who is licensed to report and pay taxes directly to this State on special fuels sold or used by him shall be entitled to deduct one-half of one per cent (½ of 1%) of the taxes paid directly to the State of Texas by him.

The above deductions or allowances shall be for evaporation and handling losses, and for the expense of collecting taxes, making reports and tax remittances and keeping records.

(7) No city, town, county, or other political subdivision of this State shall levy or collect any excise tax on the sale or use of special fuels.

Art. 10.04. Dual Carburetion—Presumption of Use.

Any person who operates a motor vehicle that is equipped to use motor fuel and special fuels interchangeably in the propulsion of said motor vehicle shall be prima facie presumed to have used taxable special fuels exclusively in the operation of said motor vehicle, unless proof of the amount of motor fuel used is maintained for the time and in such form as the Comptroller may require by rule and regulations.

Art. 10.05. Unlawful Operations of Motor Vehicles.

(1) It is unlawful to transport special fuels upon the public highways in any cargo tank from which special fuels are sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting said products.

(2) It is unlawful to operate with special fuels any motor vehicle licensed for operation upon the public highway on which a speedometer is not kept at all times in good operating condition to correctly measure and register the miles traveled by such motor vehicle; and a conviction or judgment secured in any criminal or civil action by the State against any person for wilful violation of or failure or refusal to comply with such provisions of law shall forfeit the right of such offender to purchase special fuels in this State without paying the tax thereon for a period of six (6) months from the date final judgment is entered. This provision shall not be construed as prohibiting such person from claiming refund of the tax paid on special fuels purchased and used off the public highways of this State.

Art. 10.06. Unlawful Sales.

Except in the case of tax-paid deliveries into the fuel supply tanks of motor vehicles, it is unlawful to make bulk sales of special fuels to any person who (1) is not licensed as a supplier, or (2) is not licensed as a dealer or user of special fuels, or (3) does not furnish a signed statement that none of the special fuels purchased

will be delivered by him or permitted by him to be delivered into the fuel supply tanks of motor vehicles. A taxable use of the special fuels so purchased without securing a user's permit shall, in addition to the penal provisions hereinafter prescribed, forfeit the right of said person to purchase special fuels tax-free for a period of one (1) year from the date of such offense. Except as otherwise prescribed by rule and regulation of the Comptroller, such statement shall be effective from its date of execution to the end of the calendar year, unless revoked in writing by the purchaser after use of any special fuels so purchased, or after becoming licensed as a user. The furnishing of such statements shall be waived for a period of six (6) months from the effective date of this law, and not thereafter.

Art. 10.07. Tax Liability on Leased Motor Vehicles.

Any user who as lessee, in furtherance of his business, enters into a lease or a contract or other arrangement with another person for the operation of a motor vehicle, the operation of which will create a liability for the tax herein imposed, shall be deemed to be the operator of said motor vehicle or vehicles and shall report and pay the tax accruing by reason of the use under such lease or contract. This provision shall not be construed as relieving any lessor or person acting as a user from the payment of the tax herein imposed in cases where the lessee is not qualified as a licensed and bonded user as required herein. Nothing herein shall be construed as requiring the filing of more than one report covering a given special fuel use operation or as requiring the payment of the tax herein imposed more than once on the same special fuels.

Art. 10.08. Optional Computation of Tax.

In the event the tax herein imposed on special fuels imported into this State in the fuel supply tanks of motor vehicles and the tax on special fuels used in motor vehicles owned or operated by licensed supplier or other persons acting as users can be more accurately determined on a mileage basis (that is by determining and using the total number of miles traveled and the total gallons of fuel consumed), or in case it is more practicable to so determine the tax, the Comptroller is hereby authorized to approve and adopt such basis.

Art. 10.09. Application for Permits.

Every person defined herein as a supplier or dealer or user shall secure from the Comptroller the kind and class of permit required herein to act in such capacities or to perform such functions. Applications, verified by affidavit, shall be filed with the Comptroller for any such permit on a form prescribed by the Comptroller, showing the kind and class of permit desired, and such information as the Comptroller may require.

Art. 10.10. Bonds.

(1) Every person who is authorized by permit or required by law to make remittances or payments directly to this State of taxes collected upon the sale or delivery of special fuels or of taxes incurred upon the use of said products shall file with his application for permit a bond in an amount to be set by the Comptroller at not less than three times the amount of taxes that will accrue or may be expected to accrue during any month of the calendar year, but which bond shall never be less than One Thousand Dollars ($1,000) if filed by a supplier nor less than Five Hundred Dollars ($500) if filed by a dealer or user.

Every such bond shall be executed by a surety company authorized to do business in this State, payable to the State of Texas, and shall remain in force from the date it is made effective to the end of the calendar year, unless released by the Comptroller as herein provided. Such bond shall be conditioned upon the full, complete, and faithful performance by the person for whom it is issued of all of the conditions and requirements imposed on said person by this Chapter, or by rules and regulations promulgated by the Comptroller, and shall expressly guarantee the remittance or payment to the State of Texas within the time prescribed by law of all taxes, penalties, interest, and costs required herein to be remitted or paid to this State by said person. Any such bond which is continuous in form may be continued in effect for a succeeding calendar year by a renewal certificate, which certificate shall have all the force and effect of an original bond.

(2) If the amount of any existing bond becomes insufficient, or any surety on a bond becomes unsatisfactory or unacceptable, the Comptroller may

require the filing of a new or an additional bond. The Comptroller shall also have authority to require the filing of reports and tax remittances at shorter intervals than one (1) month if, in his opinion, an existing bond has become insufficient. If any supplier, or dealer, or user licensed hereunder shall fail or refuse to file a new or an additional bond within ten (10) days after demand or shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the Comptroller, his permit shall be revoked or suspended in the manner herein provided. The filing of a new bond, or the cancellation or suspension of a permit, or recoveries on any bond, shall not invalidate an existing bond, but any surety on a bond shall be released and discharged from any and all liability accruing under such bond after the expiration of thirty (30) days from the date such surety has filed with the Comptroller at his office in Austin, Travis County, Texas, written request to be released and discharged. Such request shall not operate to release or discharge such surety from liabilities incurred prior to the expiration of said thirty-day period. The Comptroller shall, upon receipt of any such request, promptly notify the person in whose behalf such bond was filed, and unless said person shall file with the Comptroller a new bond in the amount and form herein provided within fifteen (15) days from the date of such notice, the Comptroller shall proceed to cancel the permit of said person.

(3) Any person who has filed with the Comptroller a bond as a motor fuel distributor under the terms and conditions provided in the Motor Fuel Tax Law, Chapter 9, Art. 9.07 of this Act, may extend the terms and conditions of said distributor's bond, by rider or bond form approved by the Comptroller, to include coverage of all liabilities and conditions imposed by this Chapter upon the supplier, or the dealer, or the user to whom said extension is made applicable. The amount of bond that may be required of a supplier, dealer or user shall not exceed the maximum amount provided by said motor fuel tax law for a motor fuel distributor's permit.

(4) Any applicant for a permit may, in lieu of filing a surety bond, deposit cash in the amount of bond required in the Suspense Account of the State Treasury, or may deposit securities of a par value equal to the amount of bond required and of a class in which funds of the University of Texas may be legally invested.

Such cash or securities shall be released within sixty (60) days after cancellation or surrender of any permit held by the person in whose behalf they were deposited when said permit holder has been cleared of all tax liability by the Comptroller.

The Comptroller is hereby authorized and empowered to withdraw and use any such cash and to sell any such securities and use the proceeds therefrom to pay off and satisfy any judgment secured in any action by this State to recover special fuels taxes, costs, penalties, and interest found to be due this State by any person in whose behalf such cash or such securities were deposited. Any such person may acknowledge in writing the correctness of the State's claim against him for taxes, costs, penalties and interest and may authorize the use of said cash or the proceeds from the sale of such securities to pay on or pay off the claim without having suit filed.

Art. 10.11. Permits.

(1) Upon approval of an application and approval of bond if a bond is required, the Comptroller shall issue to the applicant a permit authorizing him to engage in the kind of business or other operations or to perform the functions set out in and authorized by the class of permit so issued. The permits shall be issued for each calendar year, or any unexpired part of a year, and shall be effective from the date of issue to the end of such calendar year, unless revoked or suspended for cause, as hereinafter provided. Such permits shall be of the kinds and classifications as set out hereinbelow:

NON-BONDED SUPPLIER PERMITS. Authorizing persons to engage in business as suppliers of special fuels to Bonded Dealers and Bonded Users only.

BONDED SUPPLIER PERMITS. Authorizing persons to engage in business as suppliers of special fuels to either Bonded or Non-Bonded Dealers and Users.

NON-BONDED DEALER PERMITS. Authorizing persons whose retail sales of special fuels are predominantly for delivery into the fuel supply tanks of motor vehicles, to engage in business as dealers.

TEXAS STATE LIBRARY
Austin, Texas

BONDED DEALER PERMITS. Authorizing persons whose retail sales of special fuels are not predominantly for delivery into the fuel supply tanks of motor vehicles to engage in business as dealers.

NON-BONDED USER PERMITS. Authorizing persons whose purchases of special fuels are predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them, to act as users.

BONDED USER PERMITS. Authorizing persons whose purchases of special fuels are not predominantly for delivery by them into the fuel supply tanks of motor vehicles owned or operated by them to act as users.

BONDED USER IMPORT PERMITS. Authorizing persons who import special fuels into this State in the fuel supply tanks of motor vehicles owned or operated by them to act as users.

The Comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued.

A supplier may operate under his supplier's permit as a dealer or as a user without securing a separate permit but he shall be subject to all other conditions, requirements, and liabilities imposed by this Chapter upon a dealer or a user. A licensed dealer may use special fuels in motor vehicles owned or operated by him without securing a separate permit as a user, subject to all conditions, requirements, and liabilities imposed herein upon a user.

All permits shall be posted in a conspicuous place or kept available for public inspection at the principal place of business of the owner thereof. A certificate of the permit shall be issued for and kept on display at each additional place of business or other operation of the permit holder. Persons holding users' import permits shall reproduce the permit by photostat or other method for each motor vehicle operated by said permit holders and shall carry a copy of said permit with each motor vehicle while operating in Texas.

(2) The Comptroller, or any authorized representative of the Comptroller, is hereby authorized to cancel or to suspend any permit issued under the terms of this Chapter or to refuse the issuance, extension, or reinstatement of any permit to any person who has violated, or has failed to comply with, any rule and regulation of the Comptroller, or any provision of this Chapter. Before any such permit may be cancelled or suspended, or the issuance, or extension, or reinstatement of any such permit may be refused, the Comptroller shall give the owner of such permit or applicant therefor, not less than five (5) days notice of a hearing at the office of the Comptroller in Austin, Travis County, Texas, or at any district office maintained by the Comptroller's Department, granting said owner or applicant an opportunity to show cause before the Comptroller, or his authorized representative, why such action should not be taken. Such notice shall be in writing and may be mailed by certified or registered mail to said owner or applicant at his last known address or may be delivered by a representative of the Comptroller to the owner or applicant, and no other notice shall be required. The Comptroller may prescribe his own rules of procedure and evidence for such hearings.

If, after said hearing or opportunity to be heard, the permit is cancelled, as above provided, all taxes which have been collected or required to be collected upon the sale or delivery of special fuels and all taxes which have accrued upon the use of said product shall ipso facto become delinquent, and the permittee shall forthwith file a report for any period not covered by preceding reports filed by him to the date of cancellation and shall remit and pay to the State of Texas all taxes which have been collected or required to be collected and which have accrued from the sale or delivery or use of special fuels up to and including the date of cancellation. A new permit shall not be issued to any person who is delinquent in the payment of taxes, penalties or interest.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under a cancelled permit.

An appeal from any order of the Comptroller, or his authorized representative cancelling or refusing the issuance, extension or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo

under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller, or his authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) trial of all such cases shall commence within ten (10) days from the filing thereof; (4) the order, decision, or ruling of the Comptroller, or his authorized representative, may be suspended or modified by the Court pending a trial on the merits.

Art. 10.12. Records Required.

(1) Every supplier, dealer, or user holding a permit or required by law to secure a permit to sell, deliver, or use special fuels shall keep for a period of two (2) years open to inspection at all times by the Comptroller or Attorney General, or their authorized representatives, a complete record of all liquefied gas and all distillate fuel purchased or received and all of such products sold, delivered, or used by them showing the date of each receipt, the name and address of the person from whom purchased or received, the number of gallons of each product received at each place of business or place of storage in Texas, and showing the date of each sale or delivery, the number of gallons of each kind of product sold or delivered for taxable purposes, and the number of gallons of each product sold or delivered for the purpose not subject to the tax imposed herein, and if sold in bulk quantities the name and address of the purchaser, and showing inventories of liquefied gas and of distillate fuel on hand at each place of business at the end of each month.

(2) Each bulk sale and delivery of special fuels shall be covered by an invoice with the name and address of the supplier or dealer and a serial number printed thereon, showing the complete information set out hereinabove for each such sale, one counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purposes above provided. Each delivery of liquefied gas or distillate fuel into the fuel supply tank of a motor vehicle shall be recorded upon a serially numbered invoice issued in not less than duplicate counterparts on which shall be printer or stamped with a rubber stamp showing the name and address of the supplier, dealer, or user making such delivery and on which shall be shown, in spaces to be provided on such invoice, the date of delivery, the number of gallons and kind of special fuels so delivered, the total mileage recorded on the speedometer of the motor vehicle into which delivered, and the state highway license number of said motor vehicle.

The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered. One counterpart of the invoice shall be kept by the supplier, dealer, or user making such delivery as a part of his record and for the period of time and purposes hereinabove provided. Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the Comptroller or his representatives for a period of thirty (30) days after the special fuels it covers have been consumed.

(3) Every user shall keep, in addition to his record of deliveries into motor vehicles, a complete record of the total gallons of liquefied gas and the total gallons of distillate fuel used for other purposes during each month and the purposes for which said special fuels were used.

Art. 10.13. Tax Payments—Reports.

(1) Every supplier and dealer who is required herein to collect taxes on the sale or delivery of special fuels and every user who is required to pay taxes on the delivery of special fuels into the fuel supply tanks of motor vehicles or on the use of imported special fuels shall, on or before the twenty-fifth (25th) day of each calendar month, pay to the State of Texas at the office of the Comptroller in Austin, Travis County, Texas, the amount of such taxes required to be collected and the amount required to be paid during the month next preceding, unless said taxes have been paid by a dealer or user to a licensed supplier as provided in this Chapter. At the time of making such tax payments every supplier, dealer, and user who is required to pay any taxes directly to this State, shall file with the Comptroller a report of special fuels handled, in the form and manner as hereinafter provided.

(2) Every supplier shall, on or before the twenty-fifth (25th) day of

each calendar month, make and file with the Comptroller upon a form prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show the quantities of liquefied gas and the quantities of distillate fuel purchased or received from sources within this State and the quantities of each product received from sources outside of this State, the quantities of each of said products sold or delivered to dealers and users upon which taxes were required to be collected, the quantities of each product sold and delivered to dealers and users without collecting said taxes, the quantities of each product sold and delivered into the fuel supply tanks of motor vehicles, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such supplier and the quantities of each product used by him for other purposes, the total quantities of each product sold or delivered to persons other than dealers, users, or operators of motor vehicles, the quantities of each product lost by fire or other accident, the quantities lost by shrinkage or evaporation, and the total quantities of each product on hand at the beginning and at the end of the month covered by such report. The report shall include a schedule of the total quantities of liquefied gas and distillate fuel sold or delivered to dealers and users without collecting taxes thereon, and the names and addresses of such dealers or users. The Comptroller may in his discretion require selective schedules from any supplier with respect to any purchases, sales or deliveries of special fuels. Every supplier shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(3) Every dealer who purchases or acquires special fuels tax-free for taxable resale or delivery of any part of said products shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show, the quantities of liquefied gas and the quantities of distillate fuel purchased or received and the suppliers from whom received, the quantities of each product sold and delivered into the fuel supply tanks of motor vehicles, the quantities of each product sold and delivered for use off the public highways and the purposes for which purchased, the quantities of each product delivered into the fuel tanks of motor vehicles owned or operated by such dealer and the quantities of each product used by him for other purposes, the quantities of each product lost by fire or other accident, and the total gallons of each product on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such dealer with respect to any purchases, sales or deliveries of special fuels. Every such dealer shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered by the report.

(4) Every user who purchases or acquires special fuels tax-free for taxable use of any part of said products shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller upon forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for the special fuels handled during the preceding month which report shall show, the quantities of liquefied gas and the quantities of distillate fuel purchased or received and the suppliers from whom received, the quantities of each product delivered into the fuel supply tanks of motor vehicles owned or operated by such user, the quantities of each product used off the public highways of this State and the purposes for which used, the quantities lost by fire or other accident or disposed of in any other manner, and the total quantities of each product on hand at the beginning and at the end of the month covered by such report. The Comptroller may in his discretion require schedules from any such user with respect to any purchases, deliveries or uses of special fuels. Every such user shall attach legal tender to said report or make proper form of money order or exchange payable to the State Treasurer in the amount of

taxes due for the period covered by the report.

(5) Every user who imports special fuels in the fuel supply tanks of motor vehicles operated by him on the public highways of Texas for hire or compensation or for commercial purposes shall, on or before the twenty-fifth (25th) day of each calendar month, make and file with the Comptroller on forms prescribed by the Comptroller an itemized report, verified by affidavit, accounting for all special fuels imported and all special fuels used in such motor vehicles during the preceding calendar month, which report shall show for each motor vehicle operated by said user into or from the State of Texas for such purposes, the total miles traveled in Texas and elsewhere, the total quantities of liquefied gas or distillate fuel consumed by each motor vehicle in such travel and the average miles traveled per gallon of fuel consumed, the total miles traveled in the State of Texas and the quantities of liquefied gas or distillate fuel purchased in Texas and delivered into the fuel supply tanks of each such motor vehicle, and such other information pertinent to the use of special fuels in such motor vehicles and the taxes paid or accrued thereon, as the Comptroller may require. The Comptroller may in his discretion require schedules to be submitted as a part of such report with respect to any special fuels purchased or used in connection with such operations. Every such user shall attach legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of taxes due for the period covered in the report.

(6) When it shall appear that a supplier, dealer or user to whom the provisions of this Chapter shall apply has erroneously reported and remitted or paid more taxes than were due the State of Texas upon any special fuels during any tax-paying period, either on account of a mistake of fact or law, it shall be the duty of the Comptroller to credit the total amount of taxes due by such supplier, dealer or user for the current period with the total amount of taxes so erroneously paid, or said supplier, dealer or user may file claim for refund of the taxes erroneously paid. Such credit shall be allowed or the tax refund claim paid before any penalties and interest shall be applicable.

Art. 10.14. Refunds.

(1) Except as otherwise provided by Art. 10.15 of this Chapter, any licensed dealer who shall have paid the tax imposed by this Chapter upon any liquefied gas or distillate fuel which has been used or sold for use by such dealer for any purpose other than propelling a motor vehicle upon the public highways of this State, or which has been sold to the United States Government for the exclusive use of said government, and any licensed user who shall have paid said tax upon any liquefied gas or distillate fuel which has been used by such user for any purpose other than propelling a motor vehicle upon said public highways, may file claim for a refund of the tax or taxes so paid, less one per cent (1%) allowed suppliers for the expense of collecting and reporting such taxes of this State. Such claims shall be filed with the Comptroller on forms prescribed by the Comptroller and shall show the date of filing and the period covered in the claim, the gallons of liquefied gas and the gallons of distillate fuel sold or used for purposes subject to tax refund, and shall show such other facts and information as the Comptroller may by rule and regulation require. Every such claim shall be supported by an invoice or invoices issued by the claimant, as hereinafter provided, and shall be verified by affidavit of the claimant and filed in the office of the Comptroller within six (6) months from the date the special fuels were invoiced or required to be invoiced for sale or use, and no claim shall be made by the claimant or approved by the Comptroller when the sale of such special fuels or the appropriation for use occurs more than six (6) months prior to the date the claim is filed.

(2) When liquefied gas or distillate fuel is sold by a dealer or is appropriated for use by a user for any purposes for which a refund of the tax paid on said products may be claimed as provided herein, such dealer or user shall, at the time of each sale or appropriation for use and not thereafter, make out a serially numbered invoice in not less than duplicate counterparts with the name and address of the dealer or user printed thereon which shall show, the date of the sale or appropriation for use, the

quantities of liquefied gas and/or distillate fuel sold or appropriated for use, the purposes for which said products will be used, as declared by the purchaser or user, and such other information as the Comptroller may require. The invoice shall be signed by the recipient of any such special fuels purchased from a dealer. One counterpart of each invoice shall be kept by the dealer or user for a period of two (2) years open to the inspection of the Comptroller or his authorized representatives, and the other counterpart shall be filed as a part of the claim for tax refund as above provided.

(3) Any dealer or user who shall file claim for refund of the tax on any special fuels which has been delivered into the fuel supply tank of a motor vehicle, or who shall file any invoice in a claim for tax refund upon which any date, figure, signature, or other material information if false or incorrect, shall forfeit his right to the entire amount of the refund claim filed.

(4) If upon examination or investigation the Comptroller finds that the claim is just and that the taxes claimed have been paid by the claimant he shall issue warrant to the claimant in the amount due but no greater amount shall be refunded than has been paid into the State Treasury on any special fuels.

(5) All the moneys paid into the Treasury under the provisions of this Chapter, except the filing fees provided herein, shall be set aside in the special fund known as the Highway Motor Fuel Tax Fund and no part of said fund shall be credited to the Available School Fund until a report is made by the Comptroller to the Treasurer, showing the total maximum amount of refunds that may be required to be paid by the State out of said funds. The Comptroller shall on the 20th day of each month, or as soon thereafter as is possible, compute and ascertain the maximum amount of funds that may be due by the State on the sale of special fuels during the preceding month, upon which a refund may be due, and shall certify to the State Treasurer the maximum amount, and the Treasurer shall reserve said amount each month out of which to pay refunds and shall not distribute that part of said fund until the expiration of the time in which a refund can be made out of said fund, but as soon as said report has been made by the Comptroller and the maximum amount of refunds determined, he shall deduct said maximum amount from the total taxes paid for such month, and apply the remainder of such as provided by law. If the claimant loses, or for any reason fails to receive warrant after it has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue claimant duplicate warrant as provided in Article 4365, Revised Civil Statutes of Texas.

So much of said fund is hereby appropriated and set aside as may be necessary to pay the refunds provided herein. In no event shall any refund be made to any person in excess of the actual amount paid by such person, and the one per cent (1%) deducted originally by the supplier upon the sale or delivery of the special fuels shall be deducted in computing the refund. The Comptroller shall deduct fifty cents (50¢) from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund which said filing fee shall be set aside for the use and benefit of the Comptroller in the administration and enforcement of the provision of this Chapter, and for the payment of expenses in furnishing the claim forms and other forms provided for herein, and the same is hereby appropriated for such purpose. All such filing fees shall be paid out on vouchers and warrants in such manner as may be prescribed by law.

Art. 10.15. Exceptions to Tax Refunds.

(1) No tax refunds shall be paid to any person on special fuels used in any construction, maintenance or repair work on or in connection with the public highways of this State when and if such work is paid for from any State funds to which special fuels tax collections are allocated or is paid jointly from any such State funds and Federal funds.

(2) The delivery of special fuels into the fuel supply tanks of any tractor, truck tractor, vehicle, or machine of any kind or description for use (a) in hauling materials, supplies or products over the public highways to or from, or in connection with, any highway construction, maintenance or repair work, or (b) for use in mowing the right of way of the

public highways, when such work is paid for from State funds or State and Federal funds as above provided, shall constitute and be deemed to mean the delivery of special fuels into the fuel supply tanks of motor vehicles for taxable use.

Art. 10.16. Prima Facie Presumptions.

(1) Any supplier, dealer or user who shall fail to keep the records, issue the invoices or file the reports required by this Chapter, shall be prima facie presumed to have sold, delivered or used for taxable purposes all special fuels shown by a duly verified audit by the Comptroller, or any authorized representative thereof, to have been delivered to such supplier, dealer or user and unaccounted for at each place of business or place of storage from which special fuels are sold, delivered or used for any taxable purposes, and the Comptroller is hereby authorized to fix or establish the amount of taxes, penalties and interest due the State of Texas from such records of deliveries or from any records or information available to him and if the tax claim as developed from such procedure is not paid, such claim and any audit made by the Comptroller, or an authorized representative thereof, or any report filed by such supplier, dealer or user, shall be admissible in evidence in any suit or judicial proceedings filed by the Attorney General, and shall be prima facie evidence of the correctness of said claim or audit; provided that the prima facie presumption of the correctness of the claim may be overcome upon the trial by evidence adduced by said supplier, dealer or user.

(2) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, report, bond or other instrument referred to in this Chapter, and that the same had been adopted, promulgated, or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any action, civil or criminal, involving such order, rule, regulation, report, bond, or other instrument without further proof of such adoption, promulgation, execution or filing, and without further proof of its contents.

Art. 10.17. Liens.

All taxes, penalties, interest and costs due by any supplier, dealer or user under the provisions of this Chapter and all taxes collected by a supplier or dealer and required to be paid to this State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all of the property of any supplier, dealer or user, devoted to or used in his business or other operations as a supplier, dealer or user, which property shall include all plants, storage tanks, warehouses, office buildings, pumps, and equipment, vehicle tanks, trucks, trailers, or other vehicles, stocks on hand of every kind and character whatsoever used or usable in such business or other operations including special fuels and the proceeds from the sale or delivery of special fuels and including cash on hand and in banks, accounts and notes receivable, and any and all other property of every kind and character whatsoever and wherever situated, which is devoted to such use, and each tract of land on which such plants, storage tanks and other property is located, or which is used in carrying on such business or other operations.

This lien shall not be valid as against any "mortgagee" of a "motor vehicle" as those terms are defined in the Certificate of Title Act, provided such mortgagee does not have actual notice of the State's lien and has complied with the provisions of the Certificate of Title Act prior to the filing by the Comptroller of Public Accounts with the State Highway Department a certificate showing the make, body type and motor number of the motor vehicle upon which a tax lien exists and the amount of the taxes, penalties, interest, and costs due the State. The Comptroller of Public Accounts' certificate is to be filed with the State Highway Department and the State's lien need not be placed of record upon the motor vehicle's certificate of title.

The Comptroller of Public Accounts shall file with the State Highway Department a certificate containing the information above provided in this Section as to any motor vehicle upon which a tax lien exists to secure the

payment of the taxes owing by any supplier, dealer or user, and the filing of such certificate by the Comptroller of Public Accounts shall constitute sufficient notice of the existence and the assertion by the State of the statutory lien to secure the payment of the taxes owing to the State by such supplier, dealer or user, and any mortgagee of any mortgage, made after the filing of such certificate with the State Highway Department, shall be deemed to have notice of such lien, and the State's lien upon such motor vehicle shall continue to be a valid and prior lien as to any mortgagee. But such lien shall not be valid as to any mortgagee of a motor vehicle if the lien of such mortgagee was created and recorded prior to the filing of such certificate by the Comptroller of Public Accounts with the State Highway Commission.

Art. 10.18. Civil and Statutory Penalties.

(1) If any person affected by this Chapter shall fail or refuse to comply with any provision of this Chapter or shall violate the same, or shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Comptroller or shall violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Such penalty, if not paid, shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to such penalties, if any supplier, dealer or user does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said supplier, dealer or user, within the time prescribed by law said supplier, dealer or user shall upon the first offense forfeit two per cent (2%) of the amount due; and if said taxes are not paid within ten (10) days from the date of notice in writing by the Comptroller that any taxes have not been reported and paid, an additional eight per cent (8%) shall be forfeited; provided that upon each subsequent offense during any calendar year of failing to remit taxes collected or due the State within the time prescribed by law, such supplier, dealer or user shall forfeit twenty-five per cent (25%) of the amount due. All past due taxes and penalties shall draw interest at six per cent (6%) per annum.

(2) The venue of any suit, injunction or other proceedings at law or in equity available for the establishment of collection of any claim for delinquent taxes, penalties, or interest accruing hereunder, and the enforcement of the terms and provisions of this Chapter, shall be in a court of competent jurisdiction in Travis County, Texas, or in any other court of competent jurisdiction having venue under existing venue Statutes.

Art. 10.19. Impounding Vehicles.

In order to enforce the provisions of this Chapter, the Comptroller or his authorized representatives, or any Highway Patrolman of the Department of Public Safety, any sheriff, constable and their deputies, or any other peace officer, is empowered to stop any motor vehicle which appears to be operating with special fuels for the purpose of examining the invoice required to be carried, and examining any permit or copy thereof that may be required to be carried, to take samples from the fuel supply tanks, and for such other investigations as could reasonably be made to determine whether the taxes have been paid or accounted for by a licensed user upon the special fuels being used to propel the motor vehicle upon the public highways of Texas. If after said examination or other investigation it is found the owner or operator of said motor vehicle has not paid said taxes, or does not possess a valid permit as a user to use such special fuels in motor vehicles operating on said public highways, such authorized officers shall impound the motor vehicle, and unless proof is produced within seventy-two (72) hours from the beginning of impoundment that the owner or operator has paid said taxes, and has paid all other taxes established by audit or investigation by the Comptroller, or his authorized representatives, to be due upon the use of special fuels for the propulsion of motor vehicles upon the public highways of Texas, or that said owner or operator holds a valid user's permit to use special fuels for such purposes, the motor vehicle shall be held until all taxes, penalties and interest found to be due the State and all costs of impoundment have been paid, or until said owner or operator has filed bond with the Comptroller payable to the State

Treasurer in an amount equal to twice the amount of taxes, penalties, interest and costs found to be due, to guarantee the payment of such liabilities to the State of Texas.

If the taxes, penalties, interest and costs found to be due are not paid, the Comptroller shall certify the claim to the Attorney General who shall file proceedings to foreclose the State's tax lien upon such motor vehicle, or take such other action to recover the amount due the State as provided by law.

Art. 10.20. Subpoenas.

The Comptroller, or any duly authorized representative under the direction of the Comptroller, shall, for the purpose contemplated by this Chapter, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, and documents.

If any witness refuses to obey such subpoena or refuses to produce any pertinent books, accounts, records, or documents, named in such subpoena and in the possession or control of said witness, or if any witness in attendance before the Comptroller or one of his authorized representatives refuses without reasonable cause to be examined or to answer any legal or pertinent question, or to produce any books, record, paper, or document when ordered to do so by the Comptroller or his authorized representative, the Comptroller or representative shall certify the facts and the names of the witnesses so failing and refusing to appear and testify, or refusing access to the books, records, papers, and documents, to the district court having jurisdiction of the witness; said court shall thereupon issue proper summons to said witness to appear before the said Comptroller, or his authorized representatives, at a place designated within the jurisdiction of said court, on a day to be fixed, to be continued as occasion may require, and give such evidence and open for inspection such books, records, papers, and documents as may be required for the purpose of enforcing the provisions of this Chapter. Upon failure to obey such summons the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, paper, or document, which he was ordered to bring or produce, he shall forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller, or his authorized representatives, shall be paid their fees and mileage by the Comptroller out of any funds appropriated to said Comptroller.

The Comptroller may, if necessary to enforce the provisions of this Article, require such number of his representatives as he deems necessary to enforce the provisions hereof to subscribe to the constitutional oath of office, a record of which shall be filed in the office of the Comptroller.

Art. 10.21. Rules and Regulations.

It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, interest and costs, due or that may become due under the provisions of this Chapter, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. The Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this law or the Constitutions of this State or the United States, for the enforcement of the provisions of this Chapter and the collection of all taxes, penalties, interest and costs provided in this Chapter.

Upon the adoption of any rule and regulation, the Comptroller shall cause the same to be published one time in a newspaper of general circulation in this State and the same shall have the force and effect of law as of the date of publication, unless a subsequent date is specified therein. The publication thereof shall be sufficient notice to all parties.

Art. 10.22. Allocation of Funds.

Before allocation of the funds collected hereunder is made one per cent of the gross amount of said fund shall be set aside in the State Treasury in a special fund for the use of the

Comptroller in the administration and enforcement of the provisions of this Chapter and so much of said amount as may be needed is hereby appropriated for said purpose. Any unexpended portion of such fund shall at the end of each fiscal year revert to the respective funds in the proper proportions to which the special fuels taxes are allocated.

Each month the Comptroller shall, after making deductions for refund purposes as provided in Art. 10.14 of this Chapter, and for the administration and enforcement of the provisions of this Chapter allocate and deposit the remainder of the taxes collected under the provisions of this Chapter, in the proportions as follows: One-fourth (¼) of such taxes shall go to and be placed to the credit of the Available Free School Fund, and three-fourths (¾) of such taxes shall go to and be placed to the credit of the State Highway Fund.

Art. 10.23. Penalty, Failure to Pay or Conversion of Taxes.

(1) All taxes collected under the provisions of this Chapter shall be for the use and benefit of the State of Texas and shall not be appropriated or diverted to any other use. Said taxes shall be paid over to the State of Texas at the time and in the manner provided in this Chapter.

(2) If any supplier or dealer, or any director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or any person, shall wilfully fail or refuse to pay over to the State of Texas any such tax fund collected by him under the provisions of this Chapter on or before the date such payment is required to be paid under the provisions of this Chapter, such supplier or dealer, or such director, officer, agent, employee, trustee, or receiver of such supplier or dealer, or such person, shall be guilty of a felony and upon conviction shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars ($500) nor more than Ten Thousand Dollars ($10,000), or by both such fine and jail imprisonment.

(3) If any director, officer, agent, employee, trustee, receiver of any supplier or dealer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such supplier or dealer, or any director, officer, agent, employee, trustee, receiver of such supplier or dealer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such supplier or dealer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver, or such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than ten (10) years, or by confinement in the county jail for not less than one (1) month nor more than one (1) year, or by a fine of not less than Five Hundred Dollars ($500), nor more than Ten Thousand Dollars ($10,000), or by both such fine and jail imprisonment.

(4) If the penalties prescribed elsewhere in this Art. overlap as to the offenses punishable under Art. 10.23 of this Art. then the penalties prescribed in Art. 10.23 shall apply and control over all such penalties. Venue of a prosecution under Art. 10.23 shall be in Travis County, Texas or in the county where the offense occurred.

Art. 10.24. Felony Penalties.

If any supplier, dealer or user, or any director, officer, agent, employee, or receiver of such supplier, dealer or user (a) shall sell, deliver or use special fuels for any purpose for which a permit is required under the provisions of this Chapter without a valid permit being then and there held by such supplier, dealer or user, or (b) shall fail or refuse to make and deliver to the Comptroller within the time prescribed by law any report required to be made and delivered to the Comptroller by such supplier, dealer or user, or (c) shall knowingly make and deliver to the Comptroller any report required by law to be made and delivered which is false or incomplete, or (d) shall fail or refuse to keep in Texas for the period of time prescribed by law any records required to be kept in Texas by such supplier, dealer or user, or (e) shall knowingly falsify or make false entry in any records required by law

to be kept by such supplier, dealer or user, or (f) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to examine or audit any books or records of such supplier, dealer or user which the Comptroller is authorized by law to examine or audit, or (g) shall refuse to permit the Comptroller or any authorized representative of the Comptroller to inspect or examine any plant, equipment, motor vehicle, material or premises where special fuels are processed, stored, sold, delivered, transported, or used by such supplier, dealer or user, or (h) shall refuse to surrender any motor vehicle for impoundment when such surrender is ordered by a representative of the Comptroller or any officer authorized by law to impound such motor vehicle, or (i) shall knowingly make any false statement in any claim for a tax refund delivered to or filed with the Comptroller, such supplier, dealer or user, or such director, officer, agent, employee, or receiver of such supplier, dealer or user, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years or by confinement in the county jail for not less than (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment.

In addition to the foregoing penalties, a felony conviction for any of the above named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a supplier, dealer or user for a period of two (2) years from the date final judgment is entered.

If the penalties prescribed elsewhere in this Chapter overlap as to offenses punishable under Art. 10.24 of this Article, then the penalties prescribed by the said Art. 10.24 shall control over all such penalties except the penalties prescribed in Art. 10.23 of this Chapter. Venue of prosecution under Art. 10.24 shall be in Travis County, Texas, or in the county in which the offense occurred.

Art. 10.25. Misdemeanor Penalties.

(1) If any person shall violate, or fail or refuse to comply with any provision of this Chapter for which no penalty is provided in Art. 10.23 or Art. 10.24 of this Chapter, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

(2) If any person shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Comptroller under provisions of this Chapter he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

CHAPTER 11
MISCELLANEOUS TAXES BASED ON GROSS RECEIPTS

Art. 11.01. Express Companies.

Each individual, company, association or corporation doing an express business by steam railroad or by water in this State shall make, quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, association or corporation, showing the gross amount received from intrastate business done within this State in the payment of charges from express and freights, or from other sources of revenues received from intrastate business during the quarter next preceding. Said individuals, companies, associations or corporations, at the time of making said report, shall pay the State Treasurer an occupation tax for the quarter beginning on said date equal to two and one-half per cent (2½%) of said gross receipts, as shown by said report.

Art. 11.02. Telegraph Companies.

(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms, and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter, in

the payment of telegraph or aerogram charges, including the amount received on full rate messages and aerograms, and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter, excepting all business transacted for and on behalf of the agencies of the United States Government, for which rates are prescribed by the Postmaster General. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupation tax for the quarter beginning on said date, equal to one and one-half per cent (1½%) of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within corporated cities and towns of less than two thousand five hundred (2,500) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to one and three-fourths per cent (1¾%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand five hundred (2,500) inhabitants and not more than ten thousand (10,000) inhabitants according to the last preceding Federal census; an occupation tax for the quarter beginning on said date, equal to two and two hundred seventy-five thousandths per cent (2.275%) of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants according to the last preceding Federal census.

(2) No city or other political subdivision of this State, by virtue of its taxing power, police power or otherwise shall impose an occupation tax or charge of any sort for the privilege of doing business upon any person, corporation or association required to pay an occupation tax under this Article, provided that nothing in this Article shall be construed to prohibit the collection of any tax now imposed by a franchise, and provided further that this Article shall not affect any contracts now in existence or hereafter made between a city and the holder of a franchise.

Art. 11.03. Gas, Electric Light, Power or Water Works.

(1) Each individual, company, corporation, or association owning, operating, managing or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale and distribution in said town or city, and charging for such gas, electric lights, electric power, or water, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer or superintendent of such company, or corporation, or association, showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric lights, electric power, or water for the quarter next preceding. Said individual, company, corporation, or association, at the time of making said report for any such incorporated town or city of more than one thousand (1,000) inhabitants and less than two thousand, five hundred (2,500) inhabitants, according to the last Federal Census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to .581% of said gross receipts, as shown by said report; and for any incorporated town or city of more than two thousand, five hundred (2,500) inhabitants and less than ten thousand (10,000) inhabitants, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.07% of said gross receipts, as shown by said report; and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last Federal Census next preceding the filing of said report, the said individual, company, corporation, or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to 1.997% of said gross receipts, as shown by said report.

Nothing herein shall apply to any such gas, electric light, power or water works, or water and light plant, within this State, owned and operated by any city or town, nor to any county or water improvement or conservation district.

(2) Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation, or association, and distributed by another, the tax shall be paid by the distributor alone.

(3) No city or other political subdivision of this State, by virtue of its taxing power, proprietary power, police power or otherwise, shall impose an occupation tax or charge of any sort upon any person, corporation, or association required to pay an occupation tax under this Article. Nothing in this Article shall be construed as affecting in any way the collection of ad valorem taxes authorized by law; nor impairing or altering in any way the provisions of any contracts, agreements, or franchises now in existence, or hereafter made between a city and a public utility, relating to payments of any sort to a city. Nothing in this Article shall be construed as prohibiting an incorporated city or town from making a reasonable charge, otherwise lawful, for the use of its streets, alleys, and public ways by a public utility in the conduct of its business, and each such city shall have such right and power; but any such charges, whether designated as rentals or otherwise, and whether measured by gross receipts, units of installation, or in any manner, shall not in the aggregate exceed the equivalent of two per cent (2%) of the gross receipts of such utility within such municipality derived from the sale of gas, electric energy, or water. Any special taxes, rental, contributions, or charges accruing after the effective date of this Act, under the terms of any pre-existing contract or franchise, against any utility paying an occupation tax under this Article, when paid to any such city, shall be credited on the amount owed by such public utility on any charge or rental imposed for the use of streets, alleys, and public ways, levied by ordinance, and accruing after the effective date of this Act; provided that where valid ordinances have been enacted heretofore by cities imposing a charge or rental in excess of two per cent (2%) of the gross receipts of such utilities, nothing herein shall be construed so as to prohibit the collection of such sum as may be due said cities thereunder from the date of said ordinances up to the time this Article shall become effective.

(4) And provided further that utilities paying an occupation tax under this Article shall not hereafter be required to pay the license fee imposed in Article 5a, House Bill No. 18, Chapter 400, Acts of the Forty-fourth Legislature, for the privilege of selling gas and electric appliances and parts for the repairs thereof, in towns of three thousand (3,000) or less in population according to the next preceding Federal Census.

Art. 11.04. Car Companies.

Each individual, company, corporation, or association, residing without this State, or incorporated under the laws of any other state or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to three per cent (3%) of said gross receipts as shown by said report.

Art. 11.05. Sleeping, Palace or Dining Car Companies.

Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars or sleeping cars within this State for the use of the

public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller, under oaths of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five per cent (5%) of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies.

Art. 11.06. Telephone Companies.

(1) Each individual, company, corporation, or association owning, operating, managing, or controlling any telephone line or lines, or any telephones within this State and charging for the use of same, shall make quarterly, on the first day of January, April, July, and October of each year, a report to the Comptroller, under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within the State during said quarter. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the State Treasurer, and there is hereby levied upon said individuals, companies, corporations, and associations, an occupational tax for the quarter beginning on said date, equal to 1.65% of the gross receipts, as shown by said report, received from doing business outside of incorporated cities and towns and within incorporated cities and towns of less than two thousand, five hundred (2,500) inhabitants, according to the last preceding Federal Census, an occupation tax for the quarter beginning on said date, equal to 1.925% of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than two thousand, five hundred (2,500) inhabitants, and not more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census; an occupation tax for the quarter beginning on said date, equal to 2.5025% of said gross receipts, as shown by said report, received from doing business within incorporated cities and towns of more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census. Nothing herein shall apply to any telephone line or lines owned and operated by a cooperative, nonprofit, membership corporation.

Art. 11.07. Tax Paid When Business is Begun After Beginning of Quarter.

If any individual, company, corporation, firm, or association, in this Chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of Fifty Dollars ($50), payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this Chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this Chapter.

Art. 11.08. Additional Reports.

If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this Chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall pre-

pare blanks to be used in making the reports required by this Chapter.

Art. 11.09. Penalties.

Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid without having first obtained a permit to do so when required by law, or transacting such business after its permit to do so has been suspended, as provided by this law, shall be liable to a penalty of not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500) daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law.

CHAPTER 12
FRANCHISE TAX

Art. 12.01. Base and Rate of Tax.

(1) Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas, shall, on or before May 1 of each year, pay in advance to the Secretary of State a franchise tax for the year following which shall be based on whichever of the following shall yield the greatest tax:

(a) Two Dollars and Twenty-five Cents ($2.25) per One Thousand Dollars ($1,000) or fractional part thereof applied to that portion of the sum of the stated capital, surplus and undivided profits, and outstanding bonds, notes and debentures, the sum of which for the purposes of this Chapter is hereafter referred to as "taxable capital," allocable to Texas in accordance with Article 12.02 of this Chapter.

As used in this Chapter, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act.

For the purpose of this subsection outstanding bonds, notes and debentures shall include all written evidences of indebtedness which bear a maturity date of one (1) year or more from date of issue, and all such instruments which bear a maturity date of less than one (1) year from date of issue which represent indebtedness which has remained continuously outstanding for a period of one (1) year or more from date of inception whether or not said indebtedness has been renewed or extended by the issuance of other evidences of the same indebtedness to the same or other parties, and it is further provided that this term shall not include instruments which have been previously classified as surplus.

(b) Two Dollars and Twenty-five Cents ($2.25) per One Thousand Dollars ($1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

(c) Twenty-five Dollars ($25.00).

(2) Corporations, other than those enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, which are required by law to pay annually a tax upon intangible assets, and corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof, and corporations incorporated only for the purpose of maintaining or owning or operating electric interurban railways, and corporations, four-fifths (4/5) or more of whose assets are invested in, and four-fifths (4/5) or more of whose gross income is received from, voting common capital stock which comprises four-fifths (4/5) or more of the total fully voting common capital stock of one or more corporations which are public utility corporations under clause (3) hereof, shall be required hereafter to pay a franchise tax equal to one-fifth (1/5) of the franchise tax herein imposed against all other corporations under subsections (1)a or (1)b, but not less than the entire tax imposed by subsection (1)c of this Article.

(3) Except as provided in preceding subsection (2), all public utility corporations, which shall include any such corporation engaged solely in the business of a public utility as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law, shall pay a franchise tax as provided in this Article which shall be based on whichever of the following shall yield the greatest tax:

(a) Two Dollars and Twenty-five

Cents ($2.25) per One Thousand Dollars ($1,000) or fractional part thereof applied to that portion of the stated capital, surplus and undivided profits, allocable to Texas in accordance with Article 12.02 of this Chapter.

(b) Two Dollars and Twenty-five Cents ($2.25) per One Thousand Dollars ($1,000) or fractional part thereof applied to the assessed value for County ad valorem tax purposes of the property owned by the corporation in this State.

(c) Twenty-five Dollars ($25.00).

(4) Corporations engaged partly in the business of a public utility as defined in Subsection (3) of this Article and partly in business embraced in Subsection (1) of this Article shall pay the franchise tax in the following manner: as to those businesses which come under Subsection (1) the tax shall be computed as provided in Subsection (1) on that proportion of the entire taxable capital under said Subsection (1) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation; and to those businesses which come under Subsection (3) the tax shall be computed as provided in Subsection (3) on that proportion of the entire taxable capital under said Subsection (3) as the Texas gross receipts from such business or businesses bear to the entire Texas gross receipts of such corporation. The period for which such gross receipts are taken shall be for the same period used in computing taxable capital allocable to Texas in accordance with Article 12.02 of this Chapter.

(5) A corporation now required to pay a separate franchise tax for each purpose or business authorized by its charter shall hereafter pay only the tax provided hereunder for one purpose, and, until said corporation adopts the provisions of the Texas Business Corporation Act, it shall, in addition, pay one-fourth (¼) of such amount for each additional purpose named in its charter; provided, however, this Article shall not apply to corporations organized under the Electric Co-operative Corporation Act. Provided further, that this Article does not amend, alter, or change in anywise any provisions of Chapter 86, page 163, Forty-fifth Legislature, Acts, 1937, and provided further that nothing in this Article shall repeal any total exemption from franchise taxes now provided by law.

Art. 12.02. Allocation Formula.

Each corporation liable for payment of a franchise tax shall determine the portion of its entire taxable capital taxable by the State of Texas by multiplying same by an allocation percentage which shall be the percentage relationship which the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business.

For the purpose of this Article, the term "gross receipts from its business done in Texas" shall include:

(a) Sales of tangible personal property located within Texas at the time of the receipt of or appropriation to the orders where shipment is made to points within this State,

(b) Services performed within Texas,

(c) Rentals from property situated, and royalties from the use of patents or copyrights, within Texas, and

(d) All other business receipts within Texas.

For the purpose of this Article, the term "total gross receipts of the corporation from its entire business" shall include all of the proceeds of all sales of the corporation's tangible personal property, all receipts from services, all rentals, all royalties and all other business receipts, whether within or outside of Texas.

Art. 12.03. Corporations Exempt.

The franchise tax imposed by this Chapter shall not apply to any insurance company, surety, guaranty or fidelity company, transportation company or sleeping palace car and dining car company now required to pay an annual tax measured by their gross receipts, or to any corporation organized as a railway terminal corporation and having no annual net income from the business done by it, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the State or to corporations organized for the purpose of religious worship or for providing places of burial not for private profit, or to corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity, or

to state-chartered building and loan associations; or to any mutual investment company registered under the Federal Investment Company Act of 1940, as from time to time amended, which holds stocks, bonds or other securities of other companies solely for mutual investment purposes or for nonprofit corporations having no capital stock organized for the purpose of the education of the public in the protection and conservation of fish, game and other wildlife, grass lands and forests.

Art. 12.04. Foreign Corporations May Withdraw.

Should any foreign corporation which has or may hereafter obtain a permit to do busines within this State desire at any time to withdraw from doing business within this State, it may surrender such permit to the Secretary of State who shall mark or stamp such permit "surrendered," dating and signing the same officially, and shall endorse upon the record of such permit in his office the word "surrendered" and the date thereof; provided, however, that prior to the surrender of such permit such corporations shall have paid in full all franchise taxes and penalties owed by such corporation to the State of Texas. The Secretary of State shall not issue any permit to do business in this State to any foreign corporation which has forfeited its right to do business in this State, as provided for in this Chapter, prior to having surrendered its permit, unless such corporation shall pay to the Secretary of State at the time of the filing of its application for a new permit to do business within this State the amount of money which would have been due to the State of Texas as a revival fee as provided for in this Chapter for relieving such corporation from the forfeiture of its right to do business in Texas up to the date of the surrender of its permit.

Art. 12.05. Closed State Bank.

No franchise tax shall be assessed against a State Bank after it has closed its doors and has gone into the hands of the Banking Commissioner for liquidation according to law, nor shall any such corporation be liable for any franchise tax while in the hands of the Commissioner for liquidation. The failure of the Commissioner to pay franchise taxes for any bank in his hands for liquidation shall not operate to revoke or forfeit the charter of such corporation.

Provided, that after such liquidation should there be any funds left that would go to the stockholders, then all past due franchise taxes and penalties shall be paid before distributing such funds, if any, to outstanding stockholders.

Provided further, that the Banking Commission of Texas shall not be required to file with the Secretary of State any reports for the purpose of assessing franchise taxes.

Art. 12.06. Initial Tax to be Paid.

(1) Whenever a private domestic corporation is chartered in this State or whenever a foreign corporation applying for a permit has theretofore done no business in Texas, its initial tax shall be payable within ninety (90) days after the expiration of one (1) year from the date of the filing of such charter or the granting of such permit, as the case may be, at which time the tax shall be computed according to its first year's business as prescribed by this Chapter and at the same time, such corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including April 30th following.

Where such corporation's first year from the filing of its charter or from the granting of its permit ends between January first and May first, there shall also be computed and paid an additional year's tax for the year beginning May first following the end of the first year as above defined, which tax shall be computed from the data contained in the first report filed by such corporation.

(2) Whenever a foreign corporation applying for a permit has theretofore done no business in Texas, such corporation at the time of filing its application for such permit with the Secretary of State shall deposit with the Secretary of State the sum of Five Hundred Dollars ($500) which sum shall be deposited by the Secretary of State in a trust fund to be held by the Secretary of State during the time such foreign corporation is engaged in doing business in this State and shall pay all filing fees and franchise taxes which may be due by such foreign corporation according to the provisions of this Chapter, provided, however, that should the right of said corporation to do business in

this State be forfeited or its permit forfeited as provided in this Chapter, the Secretary of State shall apply said sum or any part thereof so deposited, to the payment of all fees and franchise taxes and penalties which may become due by such corporation to the State of Texas. After such corporation has ceased to do business in this State, either by the surrender or the forfeiture of its permit as provided by the laws of the State of Texas, such deposit or the balance thereof, if any, shall be paid by the Secretary of State to the legal agent designated in conformity with Article 12.11 of this Chapter, of such foreign corporation in this State.

(3) Any foreign corporation applying for a permit to do business in this State, at its option and in lieu of the deposit required under subsection (2) of this Article, may make, execute, and deliver to the Secretary of State its bond payable to the Secretary of State in the principal amount of such required deposit with a corporate surety chartered by this State or holding a permit authorizing it to do business in this State conditioned upon the payment when due of all fees and/or franchise taxes to become due and owing to the State of Texas under the provisions of this Chapter, which bond shall be maintained in full force and effect as long as such corporation shall be engaged in business in the State of Texas and for a period of one (1) year thereafter. Should such corporation forfeit its right to do business as provided in this Chapter the Attorney General shall bring suit upon such bond in a court of competent jurisdiction in Travis County, Texas, against the surety or sureties thereon for the amount of such delinquent fees, franchise taxes, and penalties due and owing the State of Texas, provided, that such suit shall be in addition to and cumulative of all other remedies provided by this Chapter.

Art. 12.07. Secretary of State May Require Initial Reports.

To determine the amount of any franchise tax payment required by this Chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State, and also to determine the correctness of any report which is provided for in this Chapter, the Secretary of State may, whenever he deems it necessary or proper to protect the interests of the State, require any one (1) or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit setting forth fully the facts concerning the amount of the surplus and undivided profits and outstanding evidences of indebtedness respectively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax.

Art. 12.08. Report of Corporation.

(1) Except as herein provided all corporations required to pay an annual franchise tax shall, between January first and March fifteenth of each year, make a sworn report, in duplicate, to the Secretary of State, on forms furnished by that officer, showing the condition of such corporation on the last day of the corporation's preceding fiscal year. The Secretary of State may for good cause shown by any corporation extend such time to any date up to May first. Said report shall give the cash value of all gross assets of the corporation, the amount of its authorized capital stock actually subscribed, and the amount paid in, the surplus and undivided profits or deficit, if any, the amount of mortgage, bonded and current indebtedness, the amount and date of payment of the last annual, semiannual, quarterly, or monthly dividend, the assessed value, for county ad valorem tax purposes of all property of the corporation, real, personal or mixed, owned by the corporation in this State and the county in which assessed for such purposes, the amount of all taxes paid, or due and payable to the State of Texas, or to any county, city or town, school district, road district, or other taxing subdivision of Texas for the preceding tax year.

(2) The report shall also contain any other information concerning the corporation that the Secretary of State shall direct.

Art. 12.09. Initial Reports, Penalty for Late Filing.

Where a domestic corporation is chartered in this State or where a foreign corporation which has here-

tofore done no business in this State and is granted a permit to do business in Texas it shall file its first report within ninety (90) days from the expiration of one (1) year from the date such charter was filed or permit was granted, as the case may be, showing its condition as of the end of the month nearest the end of such first year.

Any corporation which shall fail or refuse to make its report or reports required by Articles 12.08 and 12.09 when due shall be assessed a penalty of five per cent (5%) of the amount of franchise tax due which shall be payable to the Secretary of State, together with its franchise tax.

Art. 12.10. Reports Confidential.

Reports made under Articles 12.08 (or 12.08 and 12.09) shall be privileged and not for the inspection of the general public, but a bona fide stockholder owning one (1) or more shares of the outstanding stock of any corporation may examine such reports upon presentation of evidence of such ownership to the Secretary of State. No other examination, disclosure or use shall be permitted of the reports except in the course of some judicial proceedings in which the State or any bona fide stockholder is a party or in a suit by the State to cancel the permit or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws, including the Comptroller of Public Accounts, the State Auditor and the State Tax Commissioner; provided that the Secretary of State may in his discretion for good cause shown disclose to any interested person the names of the officers and directors and agents for service and the principal office and place of business of any corporation filing a franchise tax report.

Art. 12.11. Reports Sworn To; Agents for Service.

Each report of any corporation shall be sworn to by either the president, vice-president, secretary, treasurer or general manager, and shall give the name and address of each officer and director. To provide a means for service of process to collect any franchise tax or penalties or for other purposes each corporation, foreign or domestic, shall designate some person residing in this State as an authorized agent for service of process. The person designated and his address shall be given in every report.

Art. 12.12. Authority of Secretary of State, Rules and Regulations.

All forms for reports to the Secretary of State required by this Chapter shall contain such information as the Secretary of State may require. He shall have authority to make and publish rules and regulations not inconsistent with the Constitution or laws of this State or of the United States for the enforcement of this Chapter. The Secretary of State may require any corporation to furnish such additional information from its books and records as may be necessary in determining the amount of taxes that may be due hereunder. The Secretary of State or his authorized representative, or the State Auditor or his authorized representative, shall have full and complete authority to investigate and inquire into and examine the books and records of any such corporation for the purpose of ascertaining the correctness of its franchise tax liability.

Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Secretary of State, or his authorized representative, or the State Auditor or his authorized representative, to examine its books and records, whether the same be situated within this State or any other state within the United States, shall thereby forfeit its right to do business in this State; and its permit or charter shall be cancelled or forfeited.

Art. 12.13. Lien for Taxes and Penalties.

The State shall have a prior lien on all corporate property for all franchise taxes and penalties. At any time after any corporation, domestic or foreign, shall have its right to do business forfeited as provided in this Chapter, the Secretary of State shall file and record with the Clerk of the County wherein the principal place of business of said corporation is located as shown by its Articles of Incorporation or amendments thereto, or the permit of said corporation, a notice of the taxes and penalties accruing under this Chapter and the liens securing the same on a form

prepared or approved by the Attorney General of the State of Texas, showing the name of the corporation owing such taxes and penalties, including the franchise taxes then due and owing and calling attention to the possible additional taxes and penalties which might accrue in the future under the terms of this Chapter; and the County Clerk of such county is hereby authorized to and shall file, record and index such notice provided for both as a chattel mortgage and as a mortgage on real estate in accordance with the Statutes in such cases made and provided. When such notice has been filed, recorded and indexed, the same shall be and constitute notice to all parties dealing with the real and personal property of such corporation wherever situated, of the taxes and penalties then accrued and to accrue in the future and of the liens herein granted the State of Texas. The Secretary of State shall also file and record with the clerk of any county in which he has reason to believe any corporation owing franchise taxes and penalties has real or personal property, a copy of said notice and it shall be the duty of the County Clerk of such county to file, record and index such notice in manner and form hereinbefore provided, and when the same has been so filed, recorded and indexed, such notice shall be and constitute additional notice to all parties dealing with the real and personal property of such corporation in said county of such taxes and penalties and the liens granted the State of Texas. The Secretary of State is hereby authorized to execute and deliver (1) complete releases of the liens herein provided for on payment in full of the taxes and penalties, and (2) partial releases releasing particular property upon payment of such sum as the Secretary of State may deem adequate and proper under all circumstances. Such releases shall be on a form prepared or approved by the Attorney General of the State of Texas. No suit in any event shall be brought or instituted for the enforcement of the liens granted the State of Texas by this Chapter unless the same shall be instituted within two (2) years from and after the time the corporation owing such taxes and penalties shall forfeit its right to do business in this State under the provisions of this Chapter; provided, however, that nothing in this Act contained shall prevent the State of Texas from collecting or enforcing by suit or attachment at any time said franchise taxes and penalties due from the corporation owing the same.

Art. 12.14. Failure to Pay Tax.

Any corporation, either domestic or foreign which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, shall thereupon become liable to a penalty of ten per cent (10%) of the amount of such franchise tax due by such corporation. If the reports required by Articles 12.08 and 12.09 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed to such corporation, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do business forfeited" and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or permit of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this Chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporations were partners.

Art. 12.15. Notice of Forfeiture.

The Secretary of State shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State, which has failed to file such report or pay franchise tax on or before the first day of May, that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid within thirty (30) days of the mailing of such notice, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Secretary of State at any time prior to the forfeiture of the charter or permit of such a corporation as hereinafter provided, the full amount of the franchise taxes and penalties due by it, together with an additional amount of five per cent (5%) of such taxes for each month, or fractional part of a month, which shall elapse after such forfeiture as a revival fee; provided, that such amount shall in no case be less than Five Dollars ($5). When such taxes and penalties and the revival fee shall be paid to the Secretary of State, he shall revive the right of the corporation to do business within the State by cancelling the words "right to do business forfeited," upon his record and endorsing thereon the word "revived," and the date of such revival. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Secretary of State within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation, or of the permit of such foreign corporation. It shall be the duty of the Secretary of State, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General the names of all corporations, domestic and foreign, whose right to do business within this State shall have been forfeited as hereinbefore provided, and upon receiving such certificate the Attorney General shall forthwith institute suit against such corporations under the provisions of Article 12.16 of this Chapter.

Art. 12.16. Attorney General to Bring Suit.

(1) The Attorney General shall bring suit therefor, against any such corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation or the permit of any foreign corporation, for failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter or permit and, for the purpose of enforcing the provisions of this Chapter by civil suits, venue is hereby conferred upon the courts of Travis County concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation or permit. Such courts shall also have authority to restrain and enjoin a violation of any provision of this Chapter. In any case in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter or permit of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships.

(2) In all suits instituted against any domestic corporation under the provisions of Chapter 3, Title 122, Revised Civil Statutes of Texas, for the forfeiture of its charter and/or the recovery of franchise taxes or pen-

alties, where the officers named in the articles of incorporation, or amendments thereto, or annual reports on file in the office of the Secretary of State, or local agent of such corporation do not reside or cannot be located in the county wherein the principal office of such corporation is located, as stated in the original articles of incorporation of said company or amendments thereto on file in the office of the Secretary of State, or where the principal office of said corporation is not maintained or cannot be found in said County, then service of process, pleadings, and other legal notices of such action may be made upon the Secretary of State of the State of Texas and the same shall be held as due and sufficient service upon such corporation. Whenever process against such corporation is served upon the Secretary of State said service may be made by delivering to the Secretary of State or to the Assistant Secretary of State, duplicate copies of such process whereupon service of such process upon such corporation shall be deemed to be complete and shall constitute valid service upon such corporation. Upon receipt of such process the Secretary of State shall forthwith forward to said corporation a copy of such process by registered mail addressed to the post office named in its Articles of Incorporation or amendments thereto as its principal place of business or to any other place of business of such corporation as shown by the records in the office of the Secretary of State; provided, however, the failure of the Secretary of State to give such notice or to mail copies of such process shall not affect the validity of said service. The certificate of the Secretary of State, under his official seal, of such service shall be competent and sufficient proof thereof. The Secretary of State shall keep a record of all processes served upon him and shall record therein the time of said service and his action in respect thereto. This Act shall be cumulative of all existing Statutes.

Art. 12.17. Forfeiture of Charter.

Upon the rendition by the district court of any judgment of forfeiture under the provisions of this Chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "Judgment of Forfeiture," and the date of such judgment. In the event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "Appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such charter in his office and the date of such final disposition.

Upon determination by the Secretary of State that any domestic corporation whose right to do business has been previously forfeited by that officer, and which corporation has failed and refused to have its right to do business revived pursuant to the provisions of this Chapter, and which corporation fails to revive its right to do business prior to the first day of January next succeeding the date of forfeiture of its right to do business, and which corporation has no assets from which a judgment for the franchise tax, penalties, and court costs may be satisfied, and approval of such determination by the Attorney General, the charter of any such corporation may be forfeited, which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the charter of such corporation filed in his office, the words, "Charter forfeited," giving the date thereof and citing this Act as authority therefor.

Art. 12.18. Corporation in Process of Liquidation.

If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation.

The terms "process of liquidation"

and "actual bona fide state of liquidation" shall mean that the corporation by resolution of its board of directors, duly ratified by a majority vote of the stockholders of record thereof, has adopted and is pursuing in good faith a plan of assembling and marshalling the assets of the corporation, paying or settling with the creditors and debtors of the corporation and apportioning the remaining assets, if any, among and to the stockholders of the corporation, all in manner and form provided by the laws of Texas, thereby terminating the business of and dissolving the corporation in the manner and form provided by the laws of Texas. A copy of said plan of liquidation shall be attached to and made a part of the foregoing affidavit of the president and secretary of such corporation.

Art. 12.19. Optional Use of Short Form Return.

(1) In lieu of the franchise tax levied by Art. 12.01 of this Chapter, any corporation which has previously paid a franchise tax in Texas under the provisions of this Chapter and whose total assets are less than One Hundred Fifty Thousand Dollars ($150,000), may elect to pay between January 1st and May 1st of each year a franchise tax for the year following in accordance with the following schedule:

If Total Assets Are At Least	But Less Than	The Tax Shall Be
$ 0.00	$ 10,000.00	$ 30
10,000.00	15,000.00	35
15,000.00	20,000.00	40
20,000.00	25,000.00	45
25,000.00	30,000.00	55
30,000.00	40,000.00	65
40,000.00	50,000.00	85
50,000.00	60,000.00	105
60,000.00	70,000.00	135
70,000.00	80,000.00	150
80,000.00	90,000.00	175
90,000.00	100,000.00	195
100,000.00	110,000.00	210
110,000.00	120,000.00	235
120,000.00	130,000.00	250
130,000.00	140,000.00	275
140,000.00	150,000.00	300

(2) "Total assets" as used in this Article means the total of all items reported or reportable as assets on the corporation's Federal income tax return on the last day of the corporation's reporting period for Federal income tax purposes. Said last day must fall within the twelve-month period preceding February 1st of the year in which the alternative franchise tax payable under this Article is to be paid.

(3) The Secretary of State shall prescribe the form of reports to be made by any corporation electing to pay its franchise tax under the provisions of this Article. The Secretary of State may require such reports to contain any or all information required under Articles 12.08, 12.09, 12.11, or 12.12 of this Chapter.

Each report shall be sworn to by either the president, vice-president, secretary, treasurer, or general manager. There shall be submitted with the report a signed copy of the corporation's Federal income tax return for the period described in Subsection (2) of this Article. All franchise tax reports and income tax returns furnished to the Secretary of State under the provisions of this Article shall be confidential in nature and treated as such by the Secretary of State under the same conditions as provided in Article 12.10. The Secretary of State or the State Auditor may in the execution of this Article cause the books of any corporation electing to pay franchise taxes under this Article to be examined, whether such books be located within this State or any other State within the United States. The Secretary of State may make any rules or regulations necessary for the administration of this Article.

If the report of the corporation electing to pay its State franchise tax under this Article is not in accordance with the rules and regulations of the Secretary of State, the report shall

be returned to the corporation. If an acceptable report is not submitted before May 1st of each year, a penalty of five per cent (5%) of the tax due, but in no case a penalty of less than Fifteen Dollars ($15), shall be assessed and collected. Any penalties provided in this Chapter for failure to file reports required under Article 12.07 or Articles 12.08, 12.09, 12.11 or 12.12 shall also be applicable for failure to file any report required by the Secretary of State under this Article.

Art. 12.20. Additional Franchise Tax for the Period Ending April 30, 1960.

(1) In addition to all other taxes, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 7084 of the Revised Civil Statutes of Texas, 1925, as heretofore amended, for the preceding fiscal year as shown in the report required to be filed with the Secretary of State between January 1 and March 15, 1959 (or the initial or first year report required to be filed with the Secretary of State), under the provisions of Article 7089 of the Revised Civil Statutes of Texas, 1925, as then constituted, an additional franchise tax for the privilege of doing business in Texas in corporate form for the period beginning on the effective date of this Act, and ending April 30, 1960.

(2) The additional franchise tax levied by this Article shall be computed by multiplying the franchise tax due and payable under the provisions of Article 7084 of the Revised Civil Statutes of Texas, 1925, as heretofore amended, by 33.33 per cent.

(3) The additional franchise tax levied by this Article shall be paid to the Secretary of State within thirty (30) days after the effective date of this Act. If any corporation fails to pay the additional tax levied by this Article within thirty (30) days after the effective date of this Act, the right of such corporation to do business in this State shall be forfeited on December 1, 1959, which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, "right to do business forfeited," and the date of such forfeiture, and provided further that such defaulting corporation shall be subject to the same penalties, liens and conditions as provided in this Chapter.

(4) The Secretary of State shall have the right to make and promulgate rules and regulations and to prescribe and mail forms and notices necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall expire on April 30, 1960.

Art. 12.21. Additional Franchise Tax for Years Ending April 30, 1961 and April 30, 1962.

(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960 to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this Chapter for the aforesaid periods by 22.22 per cent.

(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Additional Tax Shall Be
$ 0.00	$ 20,000.00	$ 7.50
20,000.00	40,000.00	12.00
40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00

If Total Assets Are at Least	But Less Than	The Additional Tax Shall Be
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

(4) The Secretary of State shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

(6) The additional franchise tax levied by this Article shall expire on April 30, 1962.

Art. 12.22. Transfer of Administration.

When administration of the franchise tax is transferred from the Secretary of State to the Comptroller of Public Accounts in accordance with Acts of the Fifty-sixth Legislature, Regular Session, 1959, Chapter 325, all administrative powers and duties incident to collection and administration of the franchise tax conferred upon the Secretary of State by this Chapter shall devolve upon and be exercised by the State Comptroller of Public Accounts.

CHAPTER 13
TAX ON COIN-OPERATED MACHINES

Art. 13.01. Definitions. The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning or having the care, control, management or possession of any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in his or its place of business or upon premises under his or its control, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toi-

let, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

Art. 13.02. Amount of Tax.

(1) Every "owner" who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machines," shall pay and there is hereby levied on every "coin-operated machine," except such as are exempted herein, an annual occupation tax determined as follows:

(a) A fee of Five Dollars ($5) shall be paid on each "music coin-operated machine," where the coin, fee or token used, or which may be used, in the operation thereof is one of the value of Five Cents (5¢) or more, or represents a value of Five Cents (5¢) or more.

(b) A fee of Sixty Dollars ($60) shall be paid on each "skill or pleasure coin-operated machine" where the coin, fee or token used, or which may be used, in the operation thereof is one of the value in excess of Five Cents (5¢) or represents a value in excess of Five Cents (5¢).

(c) A fee of Thirty Dollars ($30) shall be paid on each "skill or pleasure coin-operated machine" where the coin, fee or token used, or which may be used, in the operation thereof, is one of the value in excess of One Cent (1¢) and not exceeding Five Cents (5¢) or represents a value in excess of One Cent (1¢) and not exceeding Five Cents (5¢).

(2) Provided that nothing herein shall prevent the "operator" of such machines from paying the tax levied in this Chapter for the account of the "owner" but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Chapter including the keeping of the records required in this Chapter.

Art. 13.03. Exemptions from Tax.

Gas meters, pay telephones, pay toilets, and cigarette vending machines which are now subject to an occupation or gross receipts tax and "service coin-operated machines" as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter.

Art. 13.04. Public Nuisance.

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the Comptroller of Public Accounts, his agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

Art. 13.05. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports.

(1) Any person who shall invoke the power and remedies of injunction against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin him from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the Comptroller of Public Accounts of the State of Texas to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the Comptroller of Public Accounts of this State or their authorized representatives, a well-bound book record, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such book record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the Comptroller of Public Accounts daily, excluding Sundays and legal holidays, a report on a form to be prescribed by said Comptroller, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this

State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The Comptroller of Public Accounts of this State, or his authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed all taxes, fees and assessments, paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the Comptroller of Public Accounts, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the Comptroller of Public Accounts all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall, in no way, interfere with or impair the power of the Comptroller of Public Accounts of this State to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

Art. 13.06. Attachment of License or Permit to Machine.

Provided further, the license or permit issued by the Comptroller to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same, or posted in a conspicuous place at or near the machine so as to be easily seen by the public.

Art. 13.07. Rules and Regulations; Forfeitures of Licenses or Permits.

(1) The Comptroller of Public Accounts shall have the authority to make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the Comptroller of Public Accounts shall have the power and authority to forfeit all licenses or permits issued to any of the foregoing persons by giving written notice, stating the reason justifying such forfeiture and the same shall be forfeited five (5) days from date of such

notice. No new licenses or permits shall be issued within a period of one (1) year to anyone whose licenses or permits have been forfeited, except at the discretion of the Comptroller of Public Accounts. If the licenses or permits of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is forfeited, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses or permits are reinstated or until new licenses or permits are granted.

Art. 13.08. Licenses or Permits; Collection of Tax; Payment of Expenses.

The Comptroller of Public Accounts of this State is hereby authorized, ordered and directed to collect, and issue licenses or permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars ($25,000) of the funds derived under the provisions of this Chapter shall be set aside annually in a special fund subject to appropriation to the Comptroller. Any unexpended portion of said fund so specified shall at the end of each fiscal year be paid in the proper proportion to the funds to which the tax levied herein is apportioned.

Art. 13.09. Existing Laws; Violations not Authorized.

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

Art. 13.10. Records; Forfeiture of Licenses.

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and Comptroller of Public Accounts of this State, or their authorized representatives, a complete book record in a well-bound book of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine. The Comptroller of Public Accounts shall be authorized and it shall be his duty to forfeit all licenses, permits of every owner failing to keep such records or failing to present such records for inspection at any time upon demand by said Comptroller of Public Accounts or his authorized representatives.

Art. 13.11. Violations of Act; Penalty; Suit to Recover Penalty.

If any "owner" of a coin-operated machine within this State shall (a) deliver to or permit to be delivered to any "operator" a coin-operated machine without a valid license or permit issued by the Comptroller of Public Accounts of this State being attached thereto, or (b) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said license or permit being attached thereto, or (c) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (d) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (e) shall fail to keep such records, or (f) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (g) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (h) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this

Chapter, or (i) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (j) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Five Dollars ($5) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas or any court having jurisdiction.

Art. 13.12. Offenses; Penalty.

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid license or permit issued by the Comptroller of Public Accounts of this State showing the payment of the tax due thereon for the current year, or (b) if any person required to keep records of coin-operated machines in this State shall falsify such records or (c) shall fail to keep such records, or (d) shall refuse or fail to present such records for inspection upon the demand of the Comptroller of Public Accounts or his authorized representatives, or (e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (f) mislead the Comptroller of Public Accounts or his authorized representatives in the enforcement of this Chapter, or (g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (h) if any person in this State shall fail to comply with the rules and regulations promulgated by the Comptroller of Public Accounts, or violate the same, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Dollars ($5) nor more than Two Hundred Dollars ($200).

Art. 13.13. Sealing Machine to Prevent Operations; Penalty for Breaking Seal.

Provided that the Comptroller of Public Accounts, or his authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said Comptroller or his authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken, or shall permit to be exhibited or displayed in his place of business any coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the Comptroller shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The Comptroller shall charge a fee of Five Dollars ($5) for the release of any coin-operated machine sealed for nonpayment of tax.

Art. 13.14. Apportionment of Tax; Tax Levy by Counties and Cities.

Except as herein provided in this Chapter, one-fourth (¼) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths (¾) of the net revenue derived from this Chapter shall be credited to the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the Forty-seventh Legislature, Regular Session, 1941. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half (½) of the State tax levied herein.

Art. 13.15. Sealing of Machines by City or County.

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars ($5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Two Hundred Dollars ($200).

Art. 13.16. Taxes, Penalties and Interest under Re-enacted or Repealed Statutes; Offenses and Penalties under Prior Laws.

All occupation taxes, penalties and interest accruing to the State of

Texas by virtue of any of the reenacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

CHAPTER 14
INHERITANCE TAX

Art. 14.01. Property Subject.

All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, including property passing under a general power of appointment exercised by the decedent by will, including the proceeds of life insurance to the extent of the amount receivable by the executor or administrator as insurance under policies taken out by the decedent upon his own life, and to the extent of the excess over Forty Thousand ($40,000) Dollars of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether such property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall, upon passing to or for the use of any person, corporation or association, be subject to a tax for the benefit of the State's General Revenue Fund, in accordance with the following classification; provided, however, that the tax imposed by this Chapter in respect to personal property of non-residents (other than tangible property having an actual situs in this State) shall not be payable (1) if the grantor or donor at the time of his death was a resident of a state or territory of the United States which, at the time of his death, did not impose a transfer or inheritance tax of any character in respect of personal property of residents of this State (other than tangible personal property having an actual situs in said State); or, (2) if the laws of the State or territory of the residence of the grantor or donor at the time of his death, contained a reciprocal provision under which non-residents were exempted from transfer or inheritance taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the State or territory of residence of such non-residents allowed a similar exemption to residents of the State or territory of residence of such a grantor or donor. For the purpose of this Chapter the District of Columbia and possessions of the United States shall be considered territories of the United States. Provided further that the provisions of this Chapter shall not apply to residents of those states which have no inheritance tax law. Any transfer made by a grantor, vendor, or donor, whether by deed, grant, sale, or gift, shall, unless shown to the contrary, be deemed to have been made in contemplation of death and subject to the same tax as herein provided, if such transfer is made within two (2) years prior to the death of the grantor, vendor, or donor, of a material part of his estate, or if the transfer made within such period is in the nature of a final distribution of property and without adequate valuable consideration.

Art. 14.02. Class A.

If passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son, the tax shall be one (1) per cent on any value in excess of Twenty-five Thousand Dollars ($25,000) and not exceeding Fifty Thousand Dollars ($50,000); two (2) per cent on any value in excess of Fifty Thousand Dollars ($50,000), and not exceeding One Hundred Thousand Dollars ($100,000); three (3) per cent on

any value in excess of One Hundred Thousand Dollars ($100,000), and not exceeding Two Hundred Thousand Dollars ($200,000); four (4) per cent on any value in excess of Two Hundred Thousand Dollars ($200,000), and not exceeding Five Hundred Thousand Dollars ($500,000); five (5) per cent on any value in excess of Five Hundred Thousand Dollars ($500,000), and not exceeding One Million Dollars ($1,000,000), and six (6) per cent on any value in excess of One Million Dollars ($1,000,000).

Art. 14.03. Class B.

If passing to or for the use of the United States, to be used in this State, the tax shall be one per cent of any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; two per cent on any value in excess of Fifty Thousand Dollars and not exceeding One Hundred Thousand Dollars; three per cent on any value in excess of One Hundred Thousand Dollars and not exceeding Two Hundred Thousand Dollars; four per cent on any value in excess of Two Hundred Thousand Dollars, and not exceeding Five Hundred Thousand Dollars; five per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding One Million Dollars; and six per cent on any value in excess of One Million Dollars.

Art. 14.04. Class C.

If passing to or for the use of a brother or sister, or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of Ten Thousand Dollars and not exceeding Twenty-five Thousand Dollars; four per cent on any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; five per cent on any value in excess of Fifty Thousand Dollars, and not exceeding One Hundred Thousand Dollars; six per cent on any value in excess of One Hundred Thousand Dollars and not exceeding Two Hundred and Fifty Thousand Dollars; seven per cent on any value in excess of Two Hundred and Fifty Thousand Dollars and not exceeding Five Hundred Thousand Dollars; eight per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding Seven Hundred and Fifty Thousand Dollars; nine per cent on any value in excess of Seven Hundred and Fifty Thousand Dollars; and not exceeding One Million Dollars; and ten per cent on any value in excess of One Million Dollars.

Art. 14.05. Class D.

If passing to or for the use of an uncle or aunt, or a direct lineal descendant of an uncle or aunt of the decedent, the tax shall be four per cent on any value in excess of One Thousand Dollars, and not exceeding Ten Thousand Dollars; five per cent on any value in excess of Ten Thousand Dollars, and not exceeding Twenty-five Thousand Dollars; six per cent on any value in excess of Twenty-five Thousand Dollars, and not exceeding Fifty Thousand Dollars; seven per cent of any value in excess of Fifty Thousand Dollars, and not exceeding One Hundred Thousand Dollars; ten per cent on any value in excess of One Hundred Thousand Dollars, and not exceeding Five Hundred Thousand Dollars; twelve per cent on any value in excess of Five Hundred Thousand Dollars and not exceeding One Million Dollars; and fifteen per cent on any value in excess of One Million Dollars.

Art. 14.06. Class E—Foreign Bequest.

If passing to or for the use of the United States, to or for the use of any other person or religious, educational or charitable organization or institution, or to any other person, corporation or association not included in any of the classes mentioned in the preceding portions of the original Act known as Chapter 29 of the General Laws of the Second Called Session of the 38th Legislature, the tax shall be:

5% on any value in excess of	$ 500	and not exceeding	$ 10,000
6% on any value in excess of	10,000	and not exceeding	25,000
8% on any value in excess of	25,000	and not exceeding	50,000
10% on any value in excess of	50,000	and not exceeding	100,000
12% on any value in excess of	100,000	and not exceeding	500,000
15% on any value in excess of	500,000	and not exceeding	1,000,000
20% on any value in excess of	1,000,000		

Provided, however, that this Article shall not apply on property passing to or for the use of the United States, or to or for the use of any religious, educational or charitable organization, incorporated, unincorporated or in the form of a trust, when such bequest, devise or gift is to be used within this State. The exemption from tax under the preceding provisions of this Article shall, without limiting its application under other appropriate circumstances, apply to all or so much of any bequest, devise or gift to or for the use of the United States, or a religious, educational or charitable organization, which is, in writing and prior to the payment of the tax, irrevocably committed for use exclusively within the State of Texas or transferred to a religious, educational or charitable organization for use exclusively within this State.

Provided, further, that if the property so passing is to or for the use of a religious, educational, or charitable organization which conducts its operations on a regional basis, one such region of which includes the State of Texas, or any part thereof, then a bequest, devise or gift to be used within such region shall be deemed to be used within this State.

"For purposes of this paragraph a region shall comprise not more than five contiguous states, either in whole or in part, one of which is the State of Texas.

"For purposes of this paragraph a religious, educational or charitable organization shall include, but not be limited to, a youth program of physical fitness, character development and citizenship training or like program."

Art. 14.07. Applicability of Art. 14.06.

The provisions of Article 14.06 shall apply in respect to a decedent dying before the effective date of this Act if the tax imposed by Article 14.06, as heretofore amended, has not been paid prior to the effective date of this Act, and shall also apply to a decedent dying after the effective date of this Act.

Art. 14.08. Divided Estate.

If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by the "Actuaries Combined Experience Tables," at four per cent compound interest.

Art. 14.09. Bequests to Trustees (Or Executors).

If a testator bequeaths or devises to his executor or trustee, property in lieu of commission, the value of such property in excess of reasonable compensation, as determined by the county judge and the Comptroller, shall be subject to taxation under this Chapter.

Art. 14.10. Deductions.

The only deductions permissible under this law are the debts due by the estate, funeral expenses, expenses incident to the last illness of the deceased, which shall be due and unpaid at the time of death, all Federal, State, County, and Municipal taxes due at the time of the death, of the decedent, attorney's fees and Court costs accruing in connection with the assessing and collecting of the taxes provided for under this Chapter, and an amount equal to the value of any property forming a part of the gross estate situated in the United States received from any person who dies within five (5) years prior to the death of the decedent, this deduction, however, to be only in the amount of the value of the property upon which an inheritance tax was actually paid and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. A full statement of facts authorizing deductions must be made in duplicate under oath by the executor, administrator, or trustee, and one copy filed with the county clerk and the other with the Comptroller, before any deductions will be allowed.

Art. 14.11. Preliminary Report.

Every executor, administrator or trustee of the estate of a decedent leaving property subject to taxation under this Chapter, and every other person coming into possession of any portion of such estate where there is no administration of such estate, shall file a preliminary report within one month after coming into possession of any such property, giving the date of the death of such decedent, the approximate value and character of his estate and the persons entitled to receive same. Such report shall be in duplicate, one of which shall be filed with the Comptroller, and the other

with the county clerk of the county wherein such decedent resided at the time of his death or wherein the principal part of his estate is located. The county clerk shall immediately notify the county judge of the filing of such report.

Art. 14.12. Inventory.

Within six months after the executor, administrator or trustee or other person comes into full possession of such estate, he shall make report in duplicate and shall file the same in the manner provided in the preceding article. Said report must be made under oath and recorded as a permanent record in the Probate Court of the county wherein filed, and must give the following information:

(1) A list of all real estate located in Texas, including improvements thereon, and the true and full value of such real estate and all improvements thereon at the date of the death of decedent;

(2) A complete list of all livestock showing the location, kind and value thereof;

(3) All moneys on hand or in the bank, regardless of location, whether in this State or outside Texas;

(4) All notes, bonds, certificates, mortgages, stocks and other securities or evidences of indebtedness due the estate, showing the name and residence of those owing the estate, and the kind of bonds owned, the kinds of notes, mortgages and stocks and other securities and the names of the corporation, association or company in which the stock or any interest is owned;

(5) The name and address of all persons entitled to such property and the value of such property to each beneficiary.

Art. 14.13. If Administration Unnecessary.

If for any reason the administration of the estate of a decedent leaving property subject to taxation under this Chapter, shall not be necessary in this State except to carry out the provisions of this law, it shall be in the discretion of the county judge and Comptroller to dispense with the appointment of an administrator, upon filing with each of them a satisfactory inventory of the taxable property by the trustee or owner. Upon the filing of such inventory, the appraisement and other proceedings required by this Chapter shall be had as in other cases.

Art. 14.14. Securities of Non-Resident.

In case of the death of a non-resident of Texas, owning no property in this State except stocks or bonds in a domestic corporation or association, and such fact is shown to the satisfaction of the Comptroller, such officer shall value said property. The administrator, executor or trustee may pay said tax when notified of the amount by the Comptroller, direct to such officer at Austin. The Comptroller shall then issue and deliver proper receipt therefor to the State Treasurer who shall keep a record of such payment and forward receipts to the trustee.

Art. 14.15. Appraisal.

The judge of the county court having jurisdiction of the estate of the decedent shall appoint two (2) competent, disinterested persons, to be approved by the Comptroller, as appraisers to fix the value of the property of such decedent subject to taxation hereunder, or upon agreement of the parties interested to dispense with the appointment of appraisers, the county judge and the Comptroller shall appraise the property and make and file a report of such appraisement. The appraisers, being first sworn, shall forthwith give notice to all persons known to have any claim or interest in the property to be appraised, including the Comptroller of Public Accounts, the executor, administrator or trustee, of the time and place when they will appraise the same. At such time and place, said appraisers shall appraise such property at its actual market value if it has a market value, and in case it has none, then its real value at the time of the death of the decedent, and shall thereupon make a report thereof in writing to said county judge and Comptroller, who shall file and keep such report. If the same decedent shall leave property taxable hereunder to more than one person, said appraisement and report shall be made for the property of each of such persons. Each appraiser shall be paid, on the certificate of the county judge, five dollars ($5) for each day employed in such appraisal, together with his actual necessary expenses incurred therein. Where appraisers have been appointed under the provisions of this Act to appraise the assets of an estate for inheritance tax purposes and have made their return in accordance

with the provisions of this Act to the county judge, should there be any part of the estate valued too high or too low, as the case may be, or any other cause in the opinion of the Comptroller or the interested party or parties of said estate that the same has not been appraised in accordance with the law governing the appraisal of same, the party or parties may within ten (10) days after the filing of the return of such appraisement, file with the county judge a motion in writing setting forth the cause or causes wherein they complain as to the report of the appraisers, and the county judge shall immediately give notice in writing to the Comptroller of Public Accounts and other interested parties of such complaint and set such motion down for a hearing not later than ten (10) days from the date the same was filed, and upon hearing thereof, if good and sufficient cause be shown, he may set aside such report of appraisement, and the same shall be held null and void, and proceed to appoint another set of appraisers as the law provides, and in the event he overrules said motion to set aside such report of appraisement, then in that event, said party shall have the right to appeal the same to the District Court of the county wherein the administration of the estate is being held or if there be no administration, or if it be a nonresident estate, then in the county wherein the principal part of the estate is located, within twenty (20) days by giving notice of appeal, and the District Court shall hear and try the same de novo, and enter its judgment on the matter in controversy accordingly.

Art. 14.16. Fixing Tax.

Immediately after the filing of the appraisal report, or as soon thereafter as practical, the County Judge shall calculate and determine the tax due on such property, according to the value thereof as shown in such appraisement, and shall furnish a statement of the same to the Comptroller for verification. If the Comptroller finds the tax to be correct, he shall so advise the County Judge, whereupon it shall immediately become the duty of the County Judge to certify such amount to the executor, administrator, or trustee, and to the person to whom, or for whose use, the property passes, and said tax shall be a lien upon such property, from the death of the decedent until paid.

Art. 14.17. Suspension of Assessment Pending Appeal.

Provided in any case where an appeal has been taken from the report of appraisement, as provided in Article 14.15 the assessment of the inheritance tax by the County Judge, as provided in Article 14.16, above, shall be suspended until such time as the matters in controversy shall have been finally adjudicated, and the County Judge shall reassess the tax in accordance with the new appraisement.

Art. 14.18. Payment of Tax.

All taxes received and/or due under this law by any executor, administrator, or trustee, shall make such payment to the Treasurer of the State of Texas through the Comptroller of Public Accounts. Upon receipt of such payment the Comptroller shall issue proper receipt therefor and shall deliver one to the party making payment or to his attorney of record.

Art. 14.19. Lien.

A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this Chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs.

Art. 14.20. Foreclosure of Lien.

If the amount of tax due hereunder as shown by such assessment furnished by the county judge and Comptroller is not paid within three months from the date of said assessment, same shall draw two per cent interest per month until paid, beginning with the date of notice of such assessment, and shall be added to said tax and collected as a penalty. If said tax and penalty are not paid within nine months from the date of such assessment the Comptroller shall so advise the county attorney, or if there is no county attorney then the district attorney, who must immediately file suit in the district court to foreclose the tax lien as other tax liens are foreclosed.

Art. 14.21. Final Account.

No final account of any executor, administrator, or trustee shall be allowed by the county judge unless such account shows and said judge finds that all taxes imposed under this

law on any property or interest passing through his hands as such has been paid. Neither shall the county judge close any estate, or permit the delivery of any property to the legatee or heir without first ascertaining whether or not a tax is due under this Chapter, and if no tax is due, such fact must be shown by an instrument in writing, approved by the State Comptroller of Public Accounts, filed with the final papers closing said estate. Provided, however, the Comptroller shall have the authority to grant an extension of six (6) months before any estate shall be charged any penalty or interest.

Art. 14.22. Delivery of Securities.

No notes, bonds, certificates, mortgages, stocks, securities or other evidences of indebtedness due the estate of deceased persons and subject to taxation, hereunder, shall be transferred or delivered to any legatee or heir until the Comptroller issues a notice to the executor, administrator or trustee of such estate, or to their bondsmen, stating that all the inheritance taxes due this State have been paid. Such notice shall be authority for any administrator, executor or trustee to deliver such property to the proper legatee or heirs.

Art. 14.23. Delivery Before Payment.

Should any domestic corporation or association transfer to any legatee or heir, or should an administrator, executor or trustee deliver to any legatee or heir, the stocks or bonds of any domestic corporation or association, or deliver any other property, before the inheritance tax thereon due this State is paid, the corporation or association, or the administrator, executor, trustee and their bondsmen, shall be liable for said tax and penalty and all cost of collection.

Art. 14.24. Offsets after Distribution.

Whenever any debts shall be proved against the estate of the decedent after the distribution of the property on which the tax has been paid and a refund is made by the distributee, due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if still in his hands, or by the Comptroller upon warrant on the State Treasurer, if said tax has been paid.

Art. 14.25. False Report.

If any person charged with the duty of filing a report hereunder shall knowingly make a false report, he shall be liable for a penalty of not exceeding one thousand dollars, which shall be collected by the county attorney, or district attorney where there is no county attorney, in the name of this State by suit in the county in which the administration is pending. Twenty per cent of such penalty shall be retained by the attorney prosecuting such suit as attorney's fees, and the remainder shall be distributed as the taxes collected under this law are distributed.

Art. 14.26. Attorney's Fees.

For the services performed under the provisions of this Chapter, the county judge shall be allowed a fee equal to two (2%) per cent of the taxes collected, not to exceed thirty ($30.00) dollars in any one estate, which fee shall be in addition to the taxes levied and collected hereunder, and shall be taxed and collected as costs in probate cases. If suit be brought, the county or district attorney prosecuting same shall receive as compensation therefor five (5%) per cent on the amount of taxes payable hereunder, not to exceed in any one case the sum of two hundred dollars ($200), which fee shall be added to and collected from said estate in addition to the taxes and penalties herein provided for, and such compensation shall be in addition to all other fees and compensation provided by this law. The aggregate of fees received under this law shall not exceed in any one year two thousand dollars ($2,000), and any fees earned in addition to said sum shall be considered a portion of the tax and penalties collected, and be distributed in the same manner.

Art. 14.27. Comptroller to Furnish Forms.

The Comptroller shall prescribe and furnish all forms necessary in making the reports and collecting the tax provided for by this law.

CHAPTER 15
ADDITIONAL INHERITANCE TAX

Art. 15.01. Amount of Tax—Federal Estate Tax Credit.

In addition to the inheritance tax already levied by this State under existing laws, an inheritance and transfer tax is hereby levied upon the net estate of every decedent dying after this Chapter shall take effect, and

whose estate, or any portion thereof, is, or hereafter shall be, made taxable under the inheritance tax laws of this State, or that may be subject to such taxes under any law of this State that may be hereinafter enacted. Said tax shall be, and is, levied upon the entire net value of the taxable estate of the decedent situated and taxable in the State of Texas, and the tax on each such estate shall be equal to the difference between the sum of such taxes due this State as inheritance or transfer taxes and eighty (80) per cent of the total sum of the estate and transfer taxes imposed on such estate by the United States Government under the Revenue Act of 1926, by reason of the property of such estate which is situated in this State and taxable under the laws of this State.

Art. 15.02. Lien.

The additional tax aforesaid shall be a lien upon the entire estate of the deceased and collectible out of said entire estate, or any part thereof, regardless of exemptions and deductions, and, in the event two (2) or more persons succeed to or become the owners of taxable interest in such estate, and in event inheritance or transfer taxes are assessed under the law against portions thereof or interests therein severally, then said additional tax levied and collected under this Act shall be apportioned between or among such part owners in proportion to the amount of tax assessed against each share or interest in said estate.

Art. 15.03. When No Tax Due.

In the event the amount of inheritance and transfer taxes assessed against any certain estate under the inheritance tax laws of this State shall equal or exceed eighty (80) per cent of the estate or transfer taxes assessed and computed by the United States under the Revenue Act of 1926, against said estate or property belonging thereto and situated within the State of Texas, then no additional taxes shall be collected hereunder, it being the purpose and intention of this Chapter to collect only a sufficient additional tax when necessary, for the State to get the full benefit of the eighty (80) per cent credit to the States provided for by Section 301, Chapter 27, of the Federal Revenue Act of 1926.

Art. 15.04. Tax on Estate Subject to Federal Tax But on Which No State Tax is Due.

Where no inheritance tax is imposed on an estate, which is situated in this State, under the laws of this State, by reason of its value not exceeding in value the amount of exemptions, and an estate tax is imposed on such estate by the Federal Government, then there shall be, and is hereby levied and shall be collected from such estate, an inheritance or transfer tax sufficient in amount to equal eighty (80) per cent of said tax imposed by the Federal Government under the Revenue Act of 1926, on that portion of said estate which is situated in the State of Texas.

In computing and determining the rate of the tax in such cases named in this Article, the State Comptroller, or other officers, whose duty it is to calculate and determine the amount of inheritance taxes shall compute the same upon the net valuations of said estate as determined and used by the United States in computing the amount of the Federal Government tax due upon said estate, and said tax shall be paid from the whole of such estate before partition and distribution among the joint or several owners of same, and said tax shall be due and payable and shall be subject to the same interest and penalties for nonpayment, as are other inheritance taxes under the provisions of the inheritance tax laws of the State.

Art. 15.05. Computation of Tax-Report.

In determining what is eighty (80) per cent of the United States tax mentioned in the preceding articles, the same shall be computed as eighty per cent (80%) of such taxes actually assessed and determined by the Federal Government under the Revenue Act of 1926, against every estate situated wholly in this State, or in case an estate is situated partly in this State and partly outside of this State, then such eighty per cent (80%) shall be computed as eighty per cent (80%) of the total amount of Federal taxes finally determined and assessed by the Federal Government under the Revenue Act of 1926, on and against that part of the estate situated in the State of Texas, and said amount of Federal tax shall be determined by multiplying the total Federal estate tax on the entire estate by a percentage which shall be the same percentage as the percentage of the net estate located in Texas is to the total net estate of the decedent,

wherever located, before deducting specific exemptions. In every case, it shall be the duty of the executor, administrator, or other officer, whose duty it is under the law to file reports of property with the county court for inheritance tax purposes, to file with the county court which has jurisdiction of such estate, and with the Comptroller of Public Accounts at Austin, a report showing the values placed on such estate and the amount of the estate tax assessed against the same by the Federal Government; and in case the Federal Government adds to or increases the net or taxable value of any estate and levies an additional tax in accordance therewith, after having already determined and assessed a tax against said estate, then such officer shall report, as aforesaid, the amount of said increased value and the amount of the added tax levied by reason thereof, this requirement applying only to an estate, or to the portion of an estate, which is situated in the State of Texas; and upon such report the additional taxes due this State shall be calculated and determined.

Art. 15.06. Notice-Penalty.

In every case in which additional taxes have been assessed against an estate under the provisions of this Chapter, notice of the assessment of such additional tax shall be given by the county judge, at once, to the owner or co-parceners of said property against which said additional taxes have been assessed, and said tax shall become due in thirty (30) days after such notice, or within thirty (30) days after such owner or co-parcener shall have had actual notice of the assessment of such additional taxes, and said tax shall bear interest at the rate of six per cent (6%) per annum from date of such notice, formal or actual, and if said tax is not paid within three (3) months from the date of such notice, a penalty of two per cent (2%) per month shall accrue on said taxes from the date same were due, which said penalty shall be in lieu of interest after said penalty begins to accrue. Nothing in this Chapter shall prevent any part owner or coparcener of property, against which such additional taxes have been assessed, from paying his pro rata of such taxes and thus relieving his property from interest or penalties after such payment.

Art. 15.07. Law Applicable.

The notice, the date for maturing, payment, interest, and penalties provided for in this Chapter shall govern in every case of additional taxes assessed by virtue thereof, but the methods and means of collection and enforcement, by suit or otherwise, shall be governed by the provision of the inheritance tax laws of this State.

Art. 15.08. Act Not to Increase Combined Tax Due to State and Federal Government.

Art. 15.01 to 15.07, inclusive, of this Chapter shall always be construed so as not to increase the total amount of taxes payable to the State and Federal Government combined upon the estates of decedents, the only purpose of said additional tax being to take full advantage of the eighty per cent (80%) credit allowed by the Federal Revenue Act of 1926, to those who have paid any estate, inheritance, legacy, or succession tax to any State or territory, or the District of Columbia in respect to any property included in the decedent's gross estate.

Art. 15.09. Information by Clerk of Court to State Comptroller as to Estate for Inheritance Taxes.

Within ten (10) days after an inventory and appraisement and list of claims shall have been filed and approved by the County or Probate Court in the estate of any decedent, it shall be the duty of the executor or administrator of such estate, to file with the Clerk of said Court, a statement setting forth the name and address and relation to the decedent of each beneficiary who shall receive any portion of said estate, whether under a will or by the law of descent and distribution, and the approximate value of each such beneficiary's share.

Within twenty (20) days after such inventory and appraisement a list of claims shall have been filed and approved by the County or Probate Court, in the estate of any decedent, it shall be the duty of the Clerk of said Court to furnish the Comptroller of Public Accounts a written report setting forth the name of the decedent, his residence at the time of his death, the name and address of the executor, administrator or trustee, the name and address and relation to the decedent of each beneficiary who shall receive any portion of said decedent's estate, whether under a will or by the law of descent and distribution and the approximate value of each such

beneficiary's share; and said Clerk shall also give to the Comptroller of Public Accounts any other information which that official may call for in reference to any such estate such information shall be furnished within ten (10) days after being called for; the Clerk shall be entitled to a fee of One Dollar ($1) for making the reports herein required on each such estate, which shall be taxed against said estate as Court costs, and be accounted for as fees of office; such reports and information being for the purpose of enabling the Comptroller of Public Accounts to determine whether an inheritance tax is due and, if so, the amount thereof.

If any executor, administrator or county or Probate Clerk shall fail or refuse to comply with any of the provisions or requirements of this Article he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than Fifty Dollars ($50) nor more than Two Hundred and Fifty Dollars ($250).

Art. 15.10. Filing of Report of Value As Determined For Federal Tax.

If the value of any estate taxes under Chapter 5, of Title 122, of the Revised Civil Statutes of 1925, with amendments (Chapter 14 of this Act), shall have been assessed and fixed by the Federal Government for the purpose of determining the Federal estate taxes due thereon, prior to the time the report which is required under the inheritance tax laws of this State is made to the State Comptroller, the value of the estate so fixed by the Federal Government shall be stated in such report. If the assessment of the estate by the Federal Government is made after the filing of such report to the State Comptroller, the officer or person whose duty it is to file the report which is required under the inheritance tax laws of this State, shall, within thirty (30) days after receiving notice or information of the final assessment and determination of the value of the estate as assessed and determined by the Federal Government for the purpose of fixing Federal estate taxes thereon, make to the Comptroller a report of the value of said estate as so fixed and determined, said report to be made under oath.

Art. 15.11. Use of Federal Valuation by State Comptroller Notice of Tax—When Due—Interest Penalty—Suit for Collection.

Upon receipt of any report provided to be made to the State Comptroller under the preceding Article and upon consideration thereof, if that official deems it advisable, he may take into consideration said report in determining the value of any estate for inheritance tax purposes, and may value or revalue such estate for such purpose after giving each beneficiary or person at interest in said estate, thirty (30) days written notice of such Federal valuation and of his said purpose to value or revalue said estate, and shall give such beneficiary, or person at interest, an opportunity to be heard and to present evidence touching the value of such estate, and, after such notice and hearing, if any is had, the State Comptroller may finally fix the value of any such estate for inheritance tax purposes, and, if he deems the same just and true, he may accept the valuation as fixed by the Federal Government in any case in calculating and determining the amount of State inheritance taxes due and if any additional taxes are assessed under this or the next two preceding Articles written notice thereof shall be given to the executor, administrator, or other legal representative, and to every person who owns a taxable part or share in such estate, which notice may be given by letter directed to the last known address of such owner; and said taxes shall become due and payable within three (3) months from the date of such notice, and all such taxes shall bear interest at the rate of six per cent (6%) per annum from the date of such notice, and on all such taxes not paid within three (3) months after the date of such notice, there shall be collected as a penalty for non-payment, interest at the rate of two per cent (2%) per month from the expiration of said three (3) months period until paid, which said penalty shall be in lieu of interest after said penalty begins to accrue; and if said taxes, penalty, and interest are not paid in full within nine (9) months from the date said taxes were so determined and assessed, suit shall be brought to collect the same in accordance with the provisions of Article 7134, Chapter 5, Title 122, of the Revised Civil Statutes of 1925, as amended.

Art. 15.12. Refund of Overpayment.

In the event the valuation of any estate is decreased under the next preceding Articles, and the amount of the taxes is determined by the State Comptroller to be less than same had previously been calculated and determined, and if the overpayment of such taxes has been made, then the State Comptroller shall refund said taxes to the extent of the overpayment, out of any subsequent inheritance tax collections made by him before same is deposited to the General Revenue Fund of the State.

Art. 15.13. Penalty—Failure to File Report.

Any person, whose duty it is under the law to file inheritance tax reports in this State, shall fail to file with the State Comptroller the report provided for by this Chapter, stating the value at which any estate has been assessed by the Federal Government, he shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500); but it shall be a defense of said prosecution if the offending party shows that his failure was not willful, and that he had good cause for failing in such duty. The State Comptroller is authorized and directed to confer quarterly with the Department of Internal Revenue of the United States to ascertain the value of estates in Texas which have been assessed or valued for taxes by the Federal Government, and he shall cooperate with said Department of Internal Revenue, furnishing to said Department all available information concerning estates of decedents in Texas which said Department may request.

Art. 15.14. Non-resident Decedent—Tax on Beneficiary's Share.

The inheritance tax imposed upon every beneficiary's share of the estate of a nonresident decedent shall be a tax which, in amount, bears the same ratio to the entire tax for which the beneficiary's interest would be liable if the entire estate were situated in Texas, as the total value of the beneficiary's share of the decedent's estate which is situated in Texas, before allowable beneficiary deductions are made, bears to the total value of the beneficiary's entire share in the estate of the nonresident decedent wherever situated, before allowable beneficiary deductions are made.

Art. 15.15. Resident Partly Within and Partly Without State.

In the event a resident of this State dies, leaving any estate subject to an inheritance tax, situated partly within and partly without this State, the inheritance tax imposed upon the share of any beneficiary of said estate situated in Texas shall be a tax which shall bear the same ratio to the amount such tax would be if his entire share and interest were situated in Texas, before allowable beneficiary deductions, bears to the total value of such beneficiary's share in such decedent's estate, wherever situated, before allowable beneficiary deductions are made.

Art. 15.16. Safe Deposits, Etc.—Delivery to Executor, Etc.—Notice to Comptroller.

(1) No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or under control securities, deposits, or other assets belonging to a decedent, who was a resident or nonresident, or belonging to such a decedent and one or more persons, shall deliver the same to the executors, administrators, heirs, or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more other persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the Comptroller at least ten (10) days prior to said delivery or transfer, and delivery to be made only in the presence of the Comptroller or his duly authorized agent, who may be the county judge of the county in which said transfer transpires, unless the Comptroller, in writing, consents to the transfer without his presence. And it shall be lawful for the said Comptroller, or his representatives, to examine all of said securities, deposits, or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination shall render such safe deposit company, trust company, corporation, or bank or other institution, person or persons liable to the payment of the amount of the tax or interest due or thereafter to become due upon said securities, deposits, or other assets delivered or transferred, and in addition thereto, a penalty of not less than one thousand or more than five thousand dollars, and the payment of

such tax and interest thereon, or the penalty above described, or both, may be enforced in an action brought by the Comptroller in any court of competent jurisdiction.

(2) County Judge—Order to Safe Deposit Company, Etc., to Turn Over Property. When it is made to appear to a county judge in this State that a safe deposit company, trust company, bank, person, or corporation has in its possession, or under its control, papers of a decedent of whose estate such court has jurisdiction, or that the decedent has leased from such a corporation a safe deposit box, and that such papers or such safe deposit box may contain a will of the decedent, or a deed to a burial plot in which the decedent is to be interred, or a policy of insurance issued in the name of the decedent and payable to a named beneficiary, he may make an order directing such deposit company, trust company, bank, person, or corporation to permit a person named in the order to examine such papers or safe deposit box in the presence of himself, or his duly authorized representative, or a representative of the Comptroller, and an officer of such safe deposit company, trust company, bank or corporation, or agent of such person, and if such documents are found among such papers, or in such box, to deliver said will to the clerk of the probate court of such county, or said deed to such persons as may be designated in such order, or said policy of insurance to the beneficiary named therein. The clerk of said court shall furnish a receipt upon the delivery of the will to him.

CHAPTER 16
STOCK TRANSFER TAX

Art. 16.01. Stock Transfer Tax.

There is hereby imposed and levied a tax as hereinafter provided on all sales; agreements to sell; or memoranda of sales; and all deliveries or transfers of shares; or certificates of stock; or certificates for rights to stock; or certificates of deposit representing an interest in or representing certificates made taxable under this section in any domestic or foreign association, company, or corporation; or certificates of interest in any business conducted by trustee or trustees made after the effective date hereof, whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank or by any delivery of any papers or agreements or memorandum or other evidence of sale or transfer or order for or agreement to buy, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to such stock or other certificate taxable hereunder, or with the possession or use thereof for any purpose, or to secure the future payment of money or the future transfer of any such stock, or certificate, on each hundred dollars of face value or fraction thereof, $0.033 except in cases where the shares or certificates are issued without designated monetary value, in which case the tax shall be at the rate of $0.033 Cents for each and every share. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure, affix and cancel the stamps and pay the tax provided by this Chapter. It is not intended by this Chapter to impose a tax upon an agreement evidencing the deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon such certificates so deposited, nor upon transfers of such certificates to the lender or to a nominee of the lender or from one nominee of the lender to another, provided the same continue to be held by such lender or nominee or nominees as collateral security as aforesaid, nor upon the retransfer of such certificates to the borrower; nor upon transfers of certificates from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another; provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary; nor upon mere loans of stock or certificates, or the return thereof; nor upon deliveries or transfers to a broker for sale; nor upon deliveries or transfer by a broker to a customer for whom and upon whose order he has purchased the same, but transfers to the lender, or to a nominee or nominees as aforesaid, or retransfers to the borrower or fiduciary; and deliveries or transfers to a broker for sale, or by a broker to a customer for whom and upon whose order he has purchased the same shall be accompanied by a certificate setting forth the facts; nor upon transfers or deliveries

made pursuant to an order of the Federal Securities and Exchange Commission which specifies and itemizes the securities ordered by it to be delivered or transferred (provided that this exemption shall not apply to such transfers or deliveries made before the passage of this Act); nor upon record transfers following such transfers or deliveries; nor in respect to shares or certificates of stock or certificates of rights to stock, or certificates of deposit representing certificates of the character taxed by this Chapter, in any domestic association, company, or corporation, if neither the sale, nor the order for, nor agreement to buy, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state and when no act necessary to effect the sale or transfer is done in this state. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only by the books of the association, company, corporation, or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation, or trustee the requisite stamps, and of such association, company, corporation, or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such sale, to which the stamp provided for by this Chapter shall be affixed and canceled; provided, however, that such bill or memorandum may be made in duplicate and the stamp provided for by this Chapter may be affixed to a duplicate of such bill or memorandum and canceled, and such duplicate of such bill or memorandum may be kept by the party making such sale in his possession, provided that he shall enter upon the original of such bill or memorandum a date and number showing that such bill or memorandum was made in duplicate and that the stamp was affixed to the duplicate thereof retained by the seller. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no more than one such bill or memorandum of sale made by the seller on any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in a book of account.

Art. 16.02. Stamps.

Adhesive stamps for the purpose of paying the State tax provided for by this Chapter shall be prepared by the Comptroller in such form, in such denomination and in such quantities as he may from time to time prescribe. He shall make provision for the sale of such stamps. The County Clerk of each county of the State of Texas is hereby made the agent for the Comptroller of Texas for the purpose of making sale of such stamps under such regulations as may be prescribed by the Comptroller.

Art. 16.03. Penalties.

Any person or persons liable to pay the tax by this Chapter imposed, and anyone who acts in the matter as agent or broker for such person or persons, who shall make any sale, transfer, or delivery of shares or certificates taxable under this Chapter without paying the tax by this Chapter imposed, and any person, who shall in pursuance of any sale, transfer, or agreement, deliver any certificate or evidence of the sale or transfer of or agreement to sell any such certificate, or bill, or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees, whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books, without having the stamps provided for in this Chapter affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay fine of not less than Five Hundred Dollars ($500) nor more than One Thousand Dollars ($1,000), or be imprisoned for not more than six (6) months

or by both such fine and imprisonment.

Art. 16.04. Cancellation of Stamps.

In every case where an adhesive stamp shall be used to denote the payment of the tax provided by this Chapter, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that such stamp cannot be again used; and if any person makes use of an adhesive stamp to denote the payment of the tax imposed by this Chapter, without so effectually canceling the same, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than Two Hundred Dollars ($200) nor more than Five Hundred Dollars ($500), or be imprisoned for not less than six (6) months, or both.

Any person who shall wilfully remove or alter or knowingly permit to be removed or altered the canceling or defacing marks of any stamp provided for by this Chapter with intent to use such stamp, or who shall knowingly or wilfully buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, and any person who shall intentionally remove or cause to be removed or knowingly permit to be removed any stamp, affixed pursuant to the requirements of this Chapter, shall be guilty of a misdemeanor and on conviction thereof shall be liable to a fine of not less than Five Hundred Dollars ($500) nor more than One Thousand Dollars ($1,000), or be imprisoned for not more than one (1) year, or by both such fine and imprisonment.

Art. 16.05. Records.

Every person, firm, company, association, corporation, or business conducted by a trustee, or trustees, engaged in whole or in part in the making or negotiating of sales, agreements to sell, deliveries or transfers of shares or certificates taxable under this Chapter, or conducting or transacting a brokerage business, shall keep or cause to be kept at some accessible place within the State of Texas, a just and true book of account, in such form as may be prescribed by the Comptroller, wherein shall be plainly and legibly recorded in separate columns, the date of making every sale, agreement to sell, delivery or transfer of such shares or certificates, the name and the number of shares thereof, the face value, the name of the seller or transferrer, the name of the purchaser or transferee, the face value of the adhesive stamps affixed and the identifying number of the bill or memorandum of sale used as provided for herein. This book shall also have recorded therein each separate purchase of stock transfer stamps, showing the date, the amount and from whom purchased.

Every association, company, or corporation, or business conducted by a trustee or trustees shall keep or cause to be kept at some accessible place within the State of Texas a stock certificate book and a just and true book of account, transfer ledger or register, in such form as may be prescribed by the Comptroller, wherein shall be plainly and legibly recorded in separate columns the date of making every transfer of stock, or other certificates included within this Chapter, the name and the number of shares thereof, the serial number of each surrendered certificate, the name of the parties surrendering such certificate, the serial number of the certificate issued in exchange therefor, the number of shares covered by said certificate, the name of the party to whom said certificate was issued and the face value of the stamps attached in payment of the tax on the transfer of the certificate. Evidence of the payment of the tax provided for herein shall be provided in one of the following manners and not otherwise, to wit:

(a) By attaching to the certificate surrendered for transfer, the stamps required for such transfer, or

(b) If the stamps are not attached to the certificate, but are attached to the bill or memorandum of sale affecting or evidencing the transfer of such certificate, by attaching to said certificate the said bill or memorandum of sale with stamps attached, or

(c) If the stamps covering the transfer are attached to a bill or memorandum affecting a transfer of one or more certificates or to one or more certificates included in said transfer, a notation must be made upon such certificates, bill or memorandum, as the case may be, clearly specifying and identifying the certificate or certificates to the sale or transfer of which the said stamps apply, or

(d) If the bill or memorandum bearing such stamps is not attached to the surrendered certificate or certificates to which it applies, a notation must be made upon such bill or memorandum stating the serial number or numbers of the certificates to which said bill or memorandum applies, as provided herein. It shall also retain and keep all surrendered or canceled shares or certificates and all memoranda relating to the sale or transfer of any thereof. All such books of account, transfer ledgers, registers, and certificate books, shall be retained and kept as aforesaid for a period of at least two (2) years subsequent to the date of the last entry made therein as herein required; and all such surrendered or canceled shares or certificates and memoranda relating to the sale or transfer of certificates taxable under this Chapter, shall be retained and kept for a period of at least two (2) years from the date of the delivery thereof. For the purpose of ascertaining whether the tax imposed by this Chapter has been paid, all such books of account, transfer ledgers, registers, certificate books, surrendered or canceled shares or certificates and memoranda relating to the sale or transfer thereof, shall at all times between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, except Saturdays, Sundays, and legal holidays, be open to examination by the Comptroller or his duly authorized representatives.

The Comptroller may enforce his right to examine such books of account and bills or memoranda of sale or transfer, and such transfer ledger, register and certificate books and surrendered or canceled shares or certificates by mandamus. If the Comptroller ascertains that the tax provided for in this Chapter has not been paid, the Attorney General at the instance of the Comptroller shall bring an action in the name of the State of Texas, in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provision of this Chapter.

Every person, firm, company, association, or corporation, or business conducted by a trustee or trustees that shall fail to keep such book of account or bills or memorandum of sale or transfer, or transfer ledger, register or certificate book or surrendered or canceled shares or certificates as herein required, or who alters, cancels, obliterates, or destroys any part of said records, or makes any false entry therein, or who shall refuse to permit the Comptroller or any of his authorized representatives freely to examine any of said books, records, or papers at any of the times herein provided, or, who shall in any other respect violate any of the provisions of this Article shall be deemed guilty of a misdemeanor and on conviction thereof shall for each and every such offense pay a fine of not less than Five Hundred Dollars ($500) nor more than Five Thousand Dollars ($5,000), or be imprisoned not less than three (3) months nor more than one (1) year, or by both such fine and imprisonment.

Art. 16.06. Transfers.

No transfer of certificates taxable under this Article made after June 1, 1941, on which a tax is imposed by this Chapter, and which tax is not paid at the time of such transfer shall be made the basis of any action or legal proceedings nor shall proof thereof be offered or received in evidence in any court of this State.

Art. 16.07. Penalties.

Any person, firm, company, association, corporation, or business conducted by a trustee or trustees that shall (a) fail to keep any of the records required to be kept under the provision of this Chapter, or (b) shall make any sale, transfer or delivery of shares or certificates taxable under this Chapter without paying the tax by this Chapter imposed and (c) any person who shall in pursuance of any sale, transfer or agreement deliver any certificate in evidence of sale or transfer of or agreement to sell any such certificate, or bill or memorandum thereof, or who shall transfer or cause the same to be transferred upon the books or records of the association, company, corporation, or business conducted by a trustee or trustees whose stock or other certificates taxable hereunder is sold or transferred, which shall transfer or cause the same to be transferred upon its books without having the stamps provided for in this Chapter affixed thereto, or (d) shall make use of the adhesive stamp to denote the payment of the tax imposed by this Chapter without actually canceling such stamp as provided in Art. 16.04 hereof, or (e) who shall wilfully remove or alter or knowingly permit to be removed

or altered the canceling or defacing marks of any stamp provided for by this Chapter with intent to use such stamp, or shall wilfully or knowingly buy, prepare for use, use, have in his possession or suffer to be used any washed, restored or counterfeit stamp, or who shall intentionally remove or cause to be removed or knowingly permit to be removed any such stamp, shall, in addition to any other penalties herein provided, forfeit to the State as a penalty a sum of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500) for each and every violation hereof. The Attorney General of the State of Texas at the instance of the Comptroller shall bring suit for the recovery thereof in any court of competent jurisdiction in Travis County, Texas, and all monies collected hereunder shall be paid into the State Treasury.

Art. 16.08. Claims.

If any stamp or stamps shall have been erroneously affixed to any book, certificate, or bill or memorandum of sale, the Comptroller may, upon presentation of a claim for the amount of such stamp or stamps and upon the production of evidence satisfactory to him that such stamp or stamps was or were so erroneously affixed so as to cause loss to the person or persons making such claim, pay such amount or such part thereof as he may allow, to such claimant out of any monies collected under this Chapter. Such claim shall be presented to the Comptroller in writing, duly verified, and shall state the full name and address of the claimant, the date of such erroneous affixing, the face value of such stamp or stamps and shall describe the instrument to which the stamp or stamps were affixed and contain such evidence as may be available upon which the demand for such refund is based. Such claim shall be presented within ninety (90) days after such erroneous affixing. The Comptroller is hereby authorized to prescribe the form of proof of such claim and if he finds that such claim is just and that such stamps have been erroneously affixed, he shall within sixty (60) days issue a warrant or warrants for the amount claimed and allowed by him. If the Comptroller rejects such claim or any part thereof the claimant is hereby authorized to file suit in a court of appropriate jurisdiction in the County of Travis against the Comptroller as defendant for the purpose of determining the amount of such claim. Such suit shall be filed within ninety (90) days from the date on which such claim shall have been rejected by the Comptroller. After final adjudication of the amount of such claim the Comptroller is hereby authorized to draw a warrant or warrants in payment of same. All such warrants for refunds under the provisions hereof shall be written and signed by the Comptroller, countersigned by the State Treasurer, and shall be paid only out of the funds collected hereunder.

Art. 16.09. Application.

The tax imposed by this Chapter shall not be construed as being applicable to shares, share accounts, certificates or passbooks issued by any building and loan association chartered under the laws of this State, nor to credit unions defined in Article 2461, Revised Civil Statutes. 1925.

CHAPTER 17
STORES AND MERCANTILE ESTABLISHMENTS

Article 17.01. License Required. From and after the passage of this Chapter it shall be unlawful for any person, agent, receiver, trustee, firm, corporation, association or copartnership, either foreign or domestic to operate, maintain, open or establish any store or mercantile establishment in this State without first having obtained a license so to do from the Comptroller of Public Accounts as hereinafter provided.

Art. 17.02. Application. (a) Any person, agent, receiver, trustee, firm, corporation, association or copartnership desiring to operate, maintain, open or establish a store or mercantile establishment in this State shall apply to the Comptroller of Public Accounts for a license so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the Comptroller of Public Accounts and shall set forth the name of the owner, manager, trustee, lessee, receiver, or other person desiring such license, the name of such store or mercantile establishment, the location, including the street number of such store, or mercantile establishment, and such other facts and information as the Comptroller of Public Accounts may require. If the applicant desires to operate, maintain, open or establish

more than one such store or mercantile establishment, such applicant shall make application for a license to operate, maintain, open or establish each such store or mercantile establishment, but the respective stores or mercantile establishments for which the applicant desires to secure licenses may all be listed on one application blank.

(b) It is hereby made the further duty of the Comptroller to collect, supervise, and enforce the collection of all licenses and application fees that may be due under the provisions of this Chapter and to that end the said Comptroller is hereby vested with all of the power and authority conferred by this Chapter. The Comptroller is further authorized and empowered to promulgate rules and regulations to provide for the collection of the amount of license and application fees due under the provisions of this Chapter and on the effective date of this Chapter.

The Comptroller is hereby directed to determine the true ownership of any store or stores or establishments or departments, regardless of the name or operating name and collect the tax levied herein accordingly.

(c) Each application shall be accompanied by a filing fee of One Dollar ($1) for each store or mermantile establishment operated or to be operated for the purpose of defraying the cost of the administration of this Chapter and the same is hereby appropriated. This application shall be mailed to the Comptroller and accompanying the application and the application fee shall be the amount of license due under the provisions of this Chapter. Those applications not mailed and which require the visit of a member of the Comptroller's staff for the collection of the application fee or the license fee shall pay a service fee of Five Dollars ($5) for each store.

(d) Each application shall be signed and sworn to by the applicant as being true and correct, before an officer authorized to administer oaths, and may contain such other information as the applicant may wish to include, or as the Comptroller may require.

Art. 17.03. Issuance of License. As soon as practicable, after the receipt of any such application, the Comptroller of Public Accounts shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If upon such examination, the Comptroller of Public Accounts shall find that any such application is not in proper form and does not contain the necessary and requisite information, he shall return such application for correction. If an application is found to be satisfactory, and if the filing and license fee as herein prescribed shall have been paid, the Comptroller of Public Accounts shall issue to the applicant a license for each store or mercantile establishment for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the store or mercantile establishment for which such license is issued.

Art. 17.04. License Period. All licenses shall be so issued as to expire on the thirty-first day of December of each year. On or before the thirty-first day of December of each year every person, agent, receiver, trustee, firm, corporation, association, or copartnership having a license shall apply to the Comptroller of Public Accounts for a renewal license for the calendar year next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller of Public Accounts. Each such application for a renewal license shall be accompanied by a filing fee of One Dollar ($1) for each store or mercantile establishment operated or to be operated and by the license fee as prescribed in Article 17.05 of this Chapter. This application shall be mailed to the Comptroller and accompanying the application and the application fee, shall be the amount of license due under the provisions of this Chapter. Those applications not mailed and which require the visit of a member of the Comptroller's staff for the collection of the application fee or the license fee shall pay a service fee of Five Dollars ($5) for each store. If the application is not received by the due date there shall be an added late fee of Fifty Cents (50¢) on each application and a five per cent (5%) penalty added to the amount of the license fee.

Art. 17.05. License Fees; Exemptions. (a) Every person, agent, receiver, trustee, firm, corporation, association or copartnership opening, establishing, operating or maintaining

one or more stores or mercantile establishments within this State, under the same general management, or ownership, shall pay the license fees hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. Every person, agent, receiver, trustee, firm, corporation, association and/or copartnership opening, establishing, operating and/or maintaining one or more stores or mercantile establishments within this State under the same general management and/or ownership and selling therein any equipment or appliances operated and/or used in connection with any electrical current and/or natural gas and/or artificial gas whether the same be in connection with the sale of electrical current and/or natural gas and/or artificial gas or not and whether such person, firm, agent, receiver, trustee, corporation, association and/or copartnership be also engaged in the business of furnishing some public utility services or not shall pay the license fees herein prescribed for the privilege of opening, establishing, operating and/or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually and shall be in addition to the filing fee prescribed in Articles 17.02 and 17.04 of this Chapter. Provided that the term "store, stores, mercantile establishment, and mercantile establishments," wherever used in this Chapter shall not include: any place or places where or from which nothing is sold except ice; any wholesale and/or retail lumber and/or building material place of business, provided as much as seventy-five per cent (75%) of the gross proceeds of the business done each preceding calendar year at such place of business is derived from the sale of lumber and/or building material, provided that the term "building material" as used herein shall be construed to include any material which is used or usable in the construction of buildings, improvements or structures, including materials consumed in and any article to be built into and become a part of buildings, improvements or structures; also mechanics hand tools used in the construction of buildings, improvements, or structures; and/or oil and gas well suppliers and equipment dealers; and any place of business commonly known as a gasoline filling station, service station, or gasoline bulk station or plant, provided as much as seventy-five per cent (75%) of the gross proceeds of the business done thereat is derived from the selling, storing, or distributing of petroleum products; or business now paying an occupation tax measured by gross receipts except as otherwise specified in this Chapter; or any place or places of business used as bona fide wholesale or retail distributing points by manufacturing concerns for distribution of products of their own manufacture only; or any place or places of business used by bona fide processors of dairy products for exclusive sale at retail of such products; or any place or places of business commonly known as religious bookstores operated for the purpose of selling religious publications of any nature including Bibles, Song Books, Books upon Religious Subjects, Church Offering Envelopes, Church, Sunday School, and Training Union Supplies; or any restaurants, sandwich shops, and other eating places; or any business operating for the purpose of parking automobiles, parking lots, garages; or any radio station; provided that gas and/or electric utilities shall not hereafter be required to pay any license fee under this Chapter for the privilege of operating in towns of three thousand (3,000) population or less according to the next preceding Federal Census, a store or stores for the purpose of selling gas and/or electrical appliances and/or parts for the repair thereof, provided as much as seventy-five per cent (75%) of the total gross receipts in the preceding calendar year in each such town where such a store or stores are located is derived from the sale therein of gas and/or electric service, and provided further that for the privilege of operating a store or stores in the towns of more than three thousand (3,000) population, according to the next preceding Federal Census, for the purpose of selling any or all of the above-named commodities, gas and/or electrical utilities shall pay only the fees imposed by Articles 17.02, 17.04, 17.05 of this Chapter.

(b) The license feees herein prescribed shall be as follows:

1. Upon one (1) store the license fee shall be Four Dollars ($4).

2. Upon each additional store in ex-

cess of one (1), but not to exceed two (2), the license fee shall be Nine Dollars ($9);

3. Upon each additional store in excess of two (2), but not to exceed five (5), the license fee shall be Twenty-seven Dollars and Fifty Cents ($27.50).

4. Upon each additional store in excess of five (5), but not to exceed ten (10), the license fee shall be Fifty-five Dollars ($55).

5. Upon each additional store in excess of ten (10), but not to exceed twenty (20), the license fee shall be One Hundred and Sixty-five Dollars ($165).

6. Upon each additional store in excess of twenty (20), but not to exceed thirty-five (35), the license fee shall be Two Hundred and Seventy-five Dollars ($275).

7. Upon each additional store in excess of thirty-five (35), but not to exceed fifty (50), the license fee shall be Five Hundred and Fifty Dollars ($550).

8. Upon each additional store in excess of fifty (50), the license fee shall be Eight Hundred and Twenty-five Dollars ($825).

(c) All those establishments, except religious bookstores, exempted from the above schedule by this Chapter shall file an application as required by Articles 17.02 and 17.04 of this Chapter. If they meet the requirements of this Chapter for exemption, they shall pay an exemption fee of Four Dollars ($4) for one (1) store and Nine Dollars ($9) for each additional store in excess of one (1).

(d) All fees listed above are for a period of twelve (12) months. Upon the issuance of any license after the first day of January of any one year for the remainder of the year, there shall be collected such fractional part of the license fee hereinabove fixed as the remaining months in the calendar year (including the month in which such license is issued) bears to the twelve (12) month period.

Art. 17.06. Application. The provisions of this Chapter shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

Art. 17.07. Store Defined. The term "store" as used in this Chapter shall be construed to mean and include any store or stores or any mercantile establishment or establishments not specifically exempted within this Chapter which are owned, operated, maintained, or controlled by the same person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind and sold at retail or wholesale.

Art. 17.08. Coin-Operated Machines: Exception of Establishments. Establishments and places of business merchandising or selling goods, wares, and merchandise only through coin-operated machines are not covered by provisions of this Chapter and thereby are not required to pay any tax or fees levied by this Chapter.

Art. 17.09. Penalty. Any person who, either for himself or as the agent of any person, receiver, trustee, firm, corporation, copartnership or association, shall operate or maintain any store or stores or mercantile establishment or mercantile establishments as defined in this Chapter without having displayed in a conspicuous place in such store or mercantile establishment the license fee receipt for the current year as required in this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Twenty-five Dollars ($25); nor more than One Hundred Dollars ($100), and each day of such violation shall constitute a separate and distinct offense.

Art. 17.10. Expenses of Administration; Payments to State Treasury. The expenses incurred by the Comptroller of Public Accounts in the administration of this Chapter shall not exceed the amount received by him as application fees as herein provided. All monies collected by the Comptroller of Public Accounts under the provisions of this Chapter shall be paid by him into the State Treasury daily as received; one-fourth of same shall be credited to the account of the Available School Fund and the remainder shall be credited to the account of the General Fund.

CHAPTER 18
CEMENT PRODUCTION TAX

Art. 18.01. Tax. There is hereby imposed a tax of $0.0275 on the one hundred (100) pounds, or fractional part thereof, of cement on every person in this State manufacturing or producing in and/or importing cement into this State, and who thereafter distributes, sells or uses the same in intrastate commerce. Said tax shall accrue on and is imposed on the first intrastate distribution, sale or use; provided, however, no tax shall be paid except on one sale, distribution or use. The person liable for said tax is hereby defined as a "distributor," and said tax is to be allocated as hereinafter provided.

Art. 18.02. Administration.

(1) Such tax shall be due and payable at the Office of the Comptroller, at Austin, on the 25th day of each succeeding month based on the business done the preceding calendar month, and on or before said date such distributor shall also make and deliver to the Comptroller a report, sworn to, showing all cement distributed, used and sold, upon which a tax accrues as well as all produced within this State and imported into or exported out of this State, and such other information as the Comptroller may require.

(2) A complete record of the business done, together with any other information the Comptroller may require, shall be kept by each distributor; which said records shall be open to the Comptroller, Attorney General, Auditor, and their representatives. The Comptroller shall adopt rules and regulations for the enforcement hereof.

(3) No person shall act as distributor in this State who shall be delinquent in the payment of said taxes, and the Attorney General may enjoin his acting as such and may enforce the provisions hereof by suit instituted in Travis County, or other county having venue.

Art. 18.03. Penalties. If any person shall violate any of the provisions hereof, he shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars ($25), and not more than One Thousand Dollars ($1,000) for each violation, and each day's violation shall constitute a separate offense. If any person shall fail to pay said tax promptly, he shall forfeit two per cent (2%) thereof as a penalty, and, after the first twenty (20) days, he shall forfeit an additional eight per cent (8%). Delinquent taxes shall draw interest at the rate of eight per cent (8%) from due date. The State shall have a prior lien for all delinquent taxes, penalties and interest on all of the property used by the distributor in his business of distributing, selling and/or using cement.

Art. 18.04. Other Taxes. No tax shall be imposed upon any interstate sale or transaction, nor upon any sale, distribution or use exempt under either the State or Federal Constitutions, and no other like occupation tax shall be imposed by any municipal corporation on cement.

CHAPTER 19
MISCELLANEOUS OCCUPATION TAXES

Art. 19.01. Miscellaneous Occupation Taxes. There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this Article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

(1) Auctioneers. From every auctioneer there shall be collected an annual tax of Ten Dollars ($10). For purposes of this Article, an auctioneer shall be deemed to be one engaged in the occupation of selling the goods of another at a competitive sale.

(2) Brokers and Factors. From every person, acting for himself or on behalf of another engaged in the business or occupation of a Broker or Factor, whether he is principally engaged in such business or not, there shall be collected Twelve Dollars ($12) per year. A "broker" or "factor" for the purpose of this subsection, is every person who, for another and for a fee, commission or other valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases or sales or transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, coin, money, real estate, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce and merchandise of any kind; whether or not he receives and delivers pos-

session thereof; provided that this subsection shall not apply to a salesman who is employed on a salary or commission basis by not more than one retailer, wholesaler, jobber, or manufacturer, nor shall this subsection apply to or be construed to include persons selling property only as receivers, trustees in bankruptcy, executors, administrators, or persons selling under the order of any Court, or any person who is included within the definition of any other occupation and is paying or subject to the payment of a tax under any other subsection of this Chapter; however, this exemption shall not apply to any individual engaged in more than one occupation as defined by the other subsections of this Article.

(3) Insurance Adjusters. From every person engaged in the occupation of adjusting insurance losses in this State, there shall be collected an annual tax of Ten Dollars ($10).

For the purpose of this subsection, a person shall be deemed to be engaged in the occupation of adjusting insurance losses when he investigates or ascertains the liability or amount of damage, or negotiates the adjustment of insurance claims or losses, or reports thereon; whether employed by an insurance company, or companies, or the insured, or is a member of a firm, association of persons, or an employee, or representative, or officer of such firm, association, or of a corporation, when such firm, association, or corporation is engaged in adjusting insurance losses.

(4) Pawnbrokers. From every pawnbroker, an annual tax of One Hundred and Fifty Dollars ($150).

(5) Loan Brokers. From loan brokers, as that term is defined by the laws of this State, an annual tax of One Hundred and Fifty Dollars ($150) for each place of business.

(6) Money Lenders. From every person, firm association of persons, or corporation whose business is lending money as agent or agents for any corporation, firm or association, either in this State or out of it, an annual tax of One Hundred Fifty Dollars ($150). Provided, that if an office is maintained in more than one city, the State tax shall be payable in each city where an office is maintained; and, provided, further, that this tax shall not apply to persons, firms, or associations who lend money as an incident merely to the real estate business, nor shall said tax apply to banks, or banking institutions regularly organized as such under the laws of this State or the United States.

(7) Tax on Dealers in Pistols. There shall be collected from every person, firm or corporation engaging in the business of bartering, leasing, selling, exchanging, or otherwise dealing in pistols for profit, whether by wholesale or retail, an annual occupation tax of Ten Dollars ($10) to be paid on or before January 1st of each year, and to be paid before continuing said business. Before engaging in said business, each such dealer shall obtain a license therefor, to be issued by the County Tax Collector of each county in which the applicant has a place of business, and for each separate place of business. The Comptroller of Public Accounts shall furnish said forms to the Tax Collectors.

(a) Counties and municipalities may levy tax. The Commissioners Courts of the several counties, as well as all municipalities, shall also have the power to levy and collect such a tax, equal to one-half of the amount herein levied.

(b) Records and reports. Each dealer shall keep a permanent record of all pistols bartered, sold, leased or otherwise disposed of. Such records shall show the number of the pistol, the name of the manufacturer, date of the transaction, salesman, purchaser, and their addresses, which record shall at all times be accessible to the Comptroller, Prosecuting Attorney, Grand Jury, and Attorney General of Texas, and a copy of this record shall be mailed to and filed with the Department of Public Safeey. This filing shall be made each three (3) months.

(c) Pistol defined. "Pistol" as used herein, shall include every kind of pistol, revolver, automatic, semi-automatic, magazine pistol, and every other short firearm intended or designed to be aimed or fired from one hand.

(d) Exceptions. No person shall be required to have the license provided for in this law or pay the tax levied herein where such person is engaged exclusively in selling pistols to the Militia of the United States or other agencies of the Federal Gov-

ernment authorized by law to purchase the same.

(8) Nine and Ten Pin Alleys. From every person, firm, association of persons, or corporation, owning or operating for profit every nine or ten pin or other alley, by whatever name called, constructed or operated upon the principle of a bowling alley, upon which pins, pegs, balls, rings, hoops or other devices are used, and where the player thereof does not or is not required to make a coin deposit causing an electrical connection of any nature or kind before such game may be actually commenced, there shall be collected an annual tax of Ten Dollars ($10) for each track or alley.

(9) Ship Brokers. Every person, firm, association of persons or corporation engaged in the management of business matters occurring between the owners of vessels and the shippers, or consignors of the freight which they carry shall be deemed a ship broker for the purpose of this Act. Every ship broker shall pay an annual tax of Twenty-five Dollars ($25).

Art. 19.02. Certain Services Connected with Oil Wells.

(1) The term "person" shall for the purpose of this Article mean and include individuals, partnerships, firms, joint stock companies, associations and corporations.

(2) An occupation tax at the rate and in the manner hereinafter provided is hereby imposed upon every person in this State engaged in the business of furnishing any service or performing any duty for others for a consideration or compensation with the use of any tools, instruments or equipment, whether electrical or mechanical, owned, controlled, or furnished by such person, or by means of any chemical, electrical or mechanical processes when such service or duty is performed in or at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning of any such well, in (1) cementing the casing seat of any oil or gas well, or (2) shooting, fracturing or acidizing the sands or other formations of the earth in any such well, or (3) surveying or testing such formations or the contents thereof, in any such well through the use of instruments or equipment at least a portion of which instruments or equipment is located within the well bore when the survey or test is made; provided, however, that nothing herein contained shall be construed or held to impose a tax upon the business of drilling or reworking any oil or gas well, or upon any service incidental thereto performed by persons engaged in such drilling or reworking business.

(3) The tax hereby imposed shall be at the rate of 2.42% of the gross amount received from the services or duty specified above after deducting from such gross amount the reasonable value at the well of any material used, consumed, expended in or incorporated into the well. The amount received from such taxable services during the calendar month next preceding shall be reported under oath by the person subject to the tax imposed hereby on a form prescribed and furnished by the Comptroller and the tax thereon shall be paid to the Comptroller at his office in Austin, Texas, on or before the 20th day of each month.

(4) A complete record of the business transacted, together with any other information the Comptroller may require shall be kept by each person furnishing any service or performing any duty subject to said tax, which said records shall be kept for a period of two (2) years, open to the inspection of the Comptroller of Public Accounts or the Attorney General of this State, or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Article, and the collection of the tax levied herein.

(5) If any person shall violate any provisions of this Article, he shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars ($25), and not more than Five Hundred Dollars ($500) for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a penalty equal to one (1) per cent per month from due date. The State shall be secured for all taxes, penalties, interests and costs due by any person under the provisions of this Article by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such lien originated upon all the property used by said person in his business.

(6) If any section, subsection, sen-

tence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Legislature hereby declares that it would have passed this Article and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Art. 19.03. Penalty for Failure to Report. Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this Chapter to be made shall forfeit and pay to the State of Texas a penalty of not exceeding One Thousand Dollars ($1,000).

Art. 19.04. Penalty for Failure to Pay Tax. Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty (30) days from the date when said tax is required by this Chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent (10%) upon the amount of such tax.

Art. 19.05. Permit Not Granted Until Tax Paid. No individual, company, corporation or association, failing to pay all taxes imposed by this Chapter shall receive a permit, when such is required to do business in this State, or continue to do business in the State, until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax, and such receipt shall be construed as a permit to do business when a separate permit is not otherwise required by law.

CHAPTER 20
MISCELLANEOUS EXCISE TAXES

Art. 20.01. Definitions. As used in this Chapter the following words shall have the following meanings unless a different meaning clearly appear from the context:

(a) "Person" shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, any agency, institution or instrumentality of the United States, this State, any agency, institution, political subdivision or instrumentality of this State, or any other group or combination acting as a unit.

(b) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(c) "Retailer" shall mean and include every person in this State who manufactures, produces, or in any other manner acquires or possesses any of the items taxable under this Chapter for the purpose of making a resale, distribution, or use of the same in this State to the user; and it shall also include every person in this State who ships, transports or imports into this State any item taxable under this Chapter and makes the first distribution of, use by, or sale to the user of same in this State.

(d) "Distributor" shall mean and include every person other than a retailer who engages in the business of distributing or selling any item taxable under this Chapter within this State. If any distributor shall sell, use or distribute any item taxable under this Chapter to any person not holding a valid permit as required by this Chapter, said distributor shall qualify as a retailer and be liable for and shall be required to pay over to the State, at the time and in the manner herein provided for a retailer, the tax due on the item taxable under this Chapter.

(e) "Radios" shall mean the apparatus or devices commonly known as radios and radio receiving sets and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive oral, musical and similar sound broadcasts transmitted by radio broadcasting stations and shall include all sub-assemblies, devices, or instruments designed to be used in conjunction with other devices which when combined will constitute a device defined as a radio under this Chapter.

(f) "Television Sets" shall mean the apparatus or devices commonly known and sold as television sets or TV sets, and shall include any instrument, apparatus or mechanical contrivance constructed, assembled or designed to receive television broadcasts transmitted or projected to such sets by television broadcasting stations or systems. Television sets shall also mean and include all sub-as-

semblies, devices, or instruments for the reproduction of sound and/or visual information from tuning devices or electronic tape recordings; devices designed for the amplification of sound and/or visual information received or reproduced by such devices; one or more units designed to be used in conjunction with other devices which when combined will constitute a device defined as a television set under this Chapter.

(g) "Phonographs" shall mean the apparatus or devices, either mechanical or electrical, commonly known and sold as phonographs, including record players, high-fidelity phonographs and stereophonic phonographs, and shall also include all sub-assemblies, devices or instruments designed for the reproduction of sound from tuning devices, recordings of tape, records or wire; devices designed for the amplification of sound received or reproduced by such devices; or one or more devices designed to be used in conjunction with other devices which when combined will constitute a device defined as a phonograph under this Chapter.

(h) "Component part" shall mean any mechanical or electronic apparatus, equipment, device or electronic part or combination thereof, and shall also include any metal, wood, or plastic housing or cabinet built or manufactured to contain a radio, television, or phonograph, or any other apparatus, equipment, device, or part as may be used in the assembly, installation, maintenance or testing of radios, television sets or phonographs as defined under this Chapter.

(i) "Air Conditioner" shall mean any apparatus or device commonly known, sold and used as an air conditioner and shall include any instrument, apparatus, or mechanical contrivance designed, constructed or assembled to cool or assist in the cooling of air in any manner. The term air conditioner shall also include all sub-assemblies, devices or instruments commonly used in conjunction with any other apparatus, device, sub-assembly or instrument, which when combined or connected as a functioning unit will constitute an air conditioner. The term air conditioner, however, shall not include a buzz fan or any other apparatus, device or system designed and used only to circulate or move air, except when the same is a functioning part of a larger unit defined herein as an air conditioner.

(j) "Boat" shall mean any and every type of watercraft, other than a seaplane on water, used or capable of being used as transportation on water.

(k) "Boat Motor" shall mean any and every type of motor or marine engine, permanently mounted or detachable, which is used or capable of being used as a means of propelling any boat or watercraft.

(l) "Retail Sale" shall mean any transfer, exchange or barter of any item taxable under this Chapter, conditional or otherwise, in any manner or by any means whatsoever, to the user and shall include conditional sales, installment lease sales, and any other transfer of an item taxable under this Chapter in which the title is retained as security for payment of the purchase price and is intended to be transferred later. It shall also mean the first sale or distribution in this State to the user of any item taxable under this Chapter which has been imported or brought into the State, or which has been manufactured, constructed, produced, or assembled in Texas, or acquired in any manner without the tax having been previously paid thereon in Texas.

(m) "Distribution" shall mean and include any transaction other than a retail sale in which ownership or title to any item taxable under this Chapter is passed to a user.

(n) "Use" shall mean the keeping or retention in this State of any item taxable under this Chapter by the user, or the exercise of any right or power over any such item incident to the ownership thereof. The term "use" shall not include the storing, keeping, or retention of items taxable under this Chapter in any place of business where such items are sold, or offered for sale, or demonstrated for sale in the regular course of business conducted at such places, nor shall the said term include items taxable under this Chapter which are crated and stored in Texas for sale and delivery outside the State of Texas.

(o) "Retail Sale Price" shall mean the actual price, valued in money, paid or required to be paid, as a consideration in the purchase or acquisition of any item taxable under this Chapter by the user, and without any deductions being made there-

from on account of cost of materials, labor, transportation charges, or any expenses whatsoever, including allowance for any trade-ins.

(p) "User" shall mean and include every person who purchases, uses or acquires in any other manner any item taxable under this Chapter for his own use in Texas and who does not purchase or acquire same for the purpose of resale.

(q) "State, This State" shall mean the State of Texas.

(r) "In This State, Within This State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

Art. 20.02. Radio, Television Set, Phonograph, Component Part, Excise Tax Imposed. There is hereby levied and shall be imposed upon the sale, distribution, or use in this State of radios, television sets, phonographs and component parts an excise tax equivalent to two and two-tenths per cent (2.2%) of the retail price for which such radios, television sets, phonographs and component parts are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in Texas a radio, television set, phonograph or component part upon which said tax has not been theretofore paid to the State of Texas shall, for the purposes of this Chapter, be constituted as a retailer and shall report and pay said tax, equal to two and two-tenths per cent (2.2%) of the retail sale price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed herein shall not apply to (1) radios or component parts used or acquired for use by police officers or other law enforcement agencies to receive short-wave broadcasts, (2) Radios, television sets, phonographs, and component parts as defined in this Chapter used by holders of a valid license or permit that is issued by the "Federal Communications Commission" in the operation of the equipment for transmission and reception as contemplated under the terms of said license or permit, and (3) radios installed in new motor vehicles upon which a tax imposed by Chapter 6 of this Act has been paid or is required to be paid.

Art. 20.03. Boat and Boat Motor Excise Tax Imposed. There is hereby levied and shall be imposed upon the sale, distribution, or use in this State of boats and boat motors an excise tax equivalent to one and six-tenths per cent (1.6%) of the retail price for which such boats and boat motors are sold.

From and after the effective date of this Chapter every person who imports or in any manner acquires for use in this State any boat and/or boat motor upon which the said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter be considered as a retailer and shall report and pay said tax equal to one and six-tenths per cent (1.6%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed in this Article shall not apply to any boat or boat motor used or intended to be used in commercial pursuits.

Art. 20.04. Air Conditioner Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution or use of air conditioners in this State an excise tax equivalent to three per cent (3%) of the retail price for which such air conditioners are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in this State any air conditioner upon which said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter, be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed in this Article shall not apply to air conditioners installed in new motor vehicles upon which a tax imposed by Chapter 6 of this Act has been paid or is required to be paid.

Art. 20.05. Cosmetics Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution or use in this State of perfumes,

essences, extracts, toilet waters, cosmetics, petroleum jellies, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, hair oils, and any other similar substance, article, or preparation by whatsoever name known or distinguished, which is used, or applied or intended to be used or applied, for toilet purposes an excise tax equivalent to two and two-tenths per cent (2.2%) of the retail price for which any such items are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not been theretofore paid to this State, shall, for the purposes of this Chapter be considered as a retailer and shall report and pay said tax, equal to two and two-tenths per cent (2.2%) of the retail price thereof, to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed by this Article shall not apply to (1) the sale of any item described in this Article to any person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof: the resale of any such item at retail by any such person however, shall be considered as a retail sale subject to the tax imposed by this Article, (2) the sale of any lotion, oil, powder or other item intended to be used or applied only in the care of babies, (3) the sale of miniature samples of any item described in this Article for demonstration use only to a house-to-house salesman by the manufacturer or distributor of such items. The resale of such miniature samples at retail by such door-to-door salesman shall be considered as a retail sale subject to the tax imposed by this Article.

Art. 20.06. Playing Card Excise Tax Imposed.

There is hereby levied and imposed upon the sale, distribution or use in this State of packs of playing cards used or capable of being used to play poker, bridge, canasta or pinochle, an excise tax equivalent to six cents (6¢) per pack.

From and after the effective date of this Chapter every person who imports or in any manner acquires for use in this State playing cards upon which said tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter be considered as a retailer and shall report and pay said tax equal to six cents (6¢) per pack of playing cards to the State of Texas at the time and in the manner hereinafter provided.

Art. 20.07. Camera, Camera Lenses, Film, Film Projectors, Photographic Apparatus and Equipment Excise Tax Imposed.

There is hereby levied and shall be imposed upon the sale, distribution or use in this State of cameras, camera lenses, unexposed photographic film in rolls (including motion picture film), electric motion or still picture projectors of the household type, photographic apparatus and equipment an excise tax equivalent to five per cent (5%) of the retail price for which any such items are sold.

From and after the effective date of this Chapter every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not theretofore been paid to the State of Texas shall for the purposes of this Chapter be considered as a retailer and shall report and pay said tax equal to five per cent (5%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided.

It is expressly provided, however, that the tax imposed under this Article shall not apply to (1) X-ray cameras or cameras weighing more than four (4) pounds exclusive of lens and accessories; (2) still camera lenses having a focal length of more than one hundred and twenty (120) millimeters, or motion picture camera lenses having a focal length of more than thirty (30) millimeters; X-ray film, unperforated microfilm, film more than one hundred and fifty (150) feet in length, or film more than twenty-five (25) feet in length and more than thirty (30) millimeters in width.

The tax imposed by this Article shall expire on August 31, 1961.

Art. 20.08. Method of Imposition, Fiduciary Relationship Established, Legislative Intent, Taxes to be in Lieu of Any Other Excise Taxes on Items Taxed under This Chapter.

(a) Every retailer who makes a

sale or distribution of an item taxable under this Chapter in Texas to the user shall add the amount of said tax to the selling price of such item which said tax shall be collected from the purchaser or recipient of such item at the time of such sale or distribution, and said tax shall be reported and paid to the State of Texas as hereinafter provided.

(b) It is the intent of this Chapter that the taxes imposed herein shall constitute excise taxes imposed on the persons using items taxable under this Chapter and the granting of a permit to retailers to collect such taxes for and in behalf of the State of Texas, shall be deemed to establish a fiduciary relationship.

(c) In the event any tax imposed upon the sale, distribution, or use of any item taxable under this Chapter is in conflict with the Constitution or laws of the United States or the Constitution of Texas, then it is hereby declared to be the intention of this Chapter to impose such tax on the first subsequent sale, distribution, or use of such item which may be subject to being taxed.

(d) The excise taxes imposed under this Chapter shall be in lieu of any other excise tax imposed by the State of Texas or any political subdivision or instrumentality thereof, upon the items taxable under this Chapter.

Art. 20.09. Promulgation of Rules and Regulations by Comptroller.

The Comptroller is hereby vested with power and authority to promulgate rules and regulations, not inconsistent with this Chapter, for the enforcement of the provisions of this Chapter and the collection of the revenues levied hereunder.

Art. 20.10. Payment of Tax, Reports Required.

(a) Every retailer who shall be required to collect any of the taxes imposed by this Chapter upon the sale or distribution of any of the items taxable under this Chapter in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Chapter used by said retailer, shall on or before the tenth day of each month remit or pay over to the State of Texas at the office of the Comptroller at Austin, Travis County, Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the calendar month immediately preceding, and one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Chapter which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment, and provided further, that the maximum amount of money allowed to be retained by any retailer under this discount provision shall not exceed One Thousand Dollars ($1,000) in any one (1) month. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller at his office in Austin, Travis County, Texas a report properly sworn to and executed by such retailer, or his representative in charge, which shall show the date such report was executed, the name and address of said retailer and the month which the report covers, and shall show separately by units and value in money the items taxable under this Chapter on hand at the beginning and end of the month and complete information on all taxable items handled during the month including: value of taxable items received in interstate commerce, value of items purchased or received in intrastate commerce, reflecting separately the number of taxable items and value thereof received with the tax paid and the number of taxable items and value thereof received without the tax having been paid, the number of taxable items and value thereof manufactured or assembled in Texas; the number of taxable items and value thereof sold in interstate commerce; the number of taxable items and value thereof returned to the manufacturer; the number of taxable units and value thereof lost by fire or other accident; the number of taxable items and value thereof used for taxable purposes by the retailer and his representatives, and shall include gross value of all retail sales of all items taxable under this Chapter. Provided that where a retailer has not sold, distributed, or used any taxable items during any month or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information

required herein shall be set up on said monthly report, but the failure of any retailer to obtain such form from said Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in amount of tax for the period covered by the report.

(b) If any retailer shall fail to remit proper taxes collected upon the sale or distribution of any item taxable under this Chapter, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit.

Art. 20.11. Penalties for Failure to Pay or Misappropriation of Taxes Imposed.

(a) All taxes collected hereunder by any retailer, or by any director, officer, agent, employee, trustee, receiver of such retailer, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Chapter.

(b) If any such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or any person shall willfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Chapter, on or before the date such payment is due as provided by this Chapter, such retailer or such director, officer, agent, employee, trustee, receiver of such retailer, or such person shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment.

(c) If any director, officer, agent, employee, trustee, receiver of any retailer, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such retailer, or any director, officer, agent, employee, trustee, receiver of such retailer, or by such person, which said money has come into the possession of or that is in the care of or under the control of such director, officer, agent, employee, trustee, receiver of such retailer, or of such person, and which said money is required to be paid to the State of Texas under the provisions of this Chapter, such director, officer, agent, employee, trustee, receiver, of such person shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100), nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment. Venue of prosecution under this Article shall be in Travis County, Texas, or in the County in which the offense occurs.

Art. 20.12. Permits Required.

(a) From and after the effective date of this Chapter, all retailers of items taxable under this Chapter in this State now engaged or who desire to become engaged in the sale, use or distribution of items taxable under this Chapter shall file a duly acknowledged application for a retailer's permit, which shall be non-assignable, with the Comptroller, said application to be accompanied by a fee of Five Dollars ($5). Said applications to be on a form prescribed by the Comptroller, to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as retailer, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, use, or distribution of any item taxable under this Chapter until such

application has been filed and a permit has been obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Comptroller shall issue to every retailer a non-assignable, consecutively numbered permit authorizing the sale, use, or distribution of items taxable under this Chapter in this State from the date of the issuance of said permit, until and including the following August 31st. On or before September 1st of each year, and before any retailer shall make a sale, use, or distribution of items taxable under this Chapter or engage in selling items taxable under this Chapter in this State after August 31st, an application shall be filed and a permit obtained for the fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Chapter, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, use or distribute items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Chapter.

Art. 20.13. Bond Required.

(a) Before any permit shall be issued and before engaging in the sale, use or distribution of any item upon which a tax is required to be paid, in Texas, every retailer shall execute and file with the Comptroller a good and sufficient surety bond, which shall run concurrently with the permit required of a retailer to be obtained. The said bond shall be signed by the said retailer and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Comptroller, and in an amount to be prescribed by the Comptroller but in no event shall said bond be less than One Hundred Dollars ($100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the retailer of all the conditions and requirements imposed upon him by this Chapter, or the rules and regulations of the Comptroller promulgated hereunder, on a form to be prescribed by the Comptroller expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, all taxes due upon the use of items taxable under this Chapter by said retailer, and all costs, penalties, and interest provided in this Chapter, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Comptroller, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. The amount of any bond required of any retailer shall be fixed by the Comptroller and additional bond may be required by the Comptroller at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the retailer may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said retailer has collected and paid to the State for any month during preceding six (6) months, but which shall never be less than the minimum aforesaid.

Provided that whenever any person imports for his own use in Texas, any item taxable under this Chapter and pays the tax to the State of Texas forthwith and before said item is used in Texas, the Comptroller may waive the requirement for furnishing bond and obtaining a permit to use said item in Texas.

(b) The Comptroller shall have the right, if, in his opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a

new or an additional bond. When said new bond has been furnished, the Comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any retailer fail or refuse to supply a new or additional bond within ten (10) days after demand, said retailer's permit shall be cancelled by the Comptroller.

(c) Any surety on any bond furnished by any retailer as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Comptroller written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Comptroller shall promptly on the receipt of notice of such request notify the retailer who furnished such bond, and unless such retailer shall within fifteen (15) days from the date of said notice, file with the Comptroller a new bond with a surety company duly authorized to do business under the laws of the State, in the amount and form hereinbefore in this Chapter provided, the Comptroller shall proceed to cancel the permit of said retailer in the manner herein provided. If such new bond shall be furnished by said retailer as above provided, the Comptroller shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any retailer may deposit in the Suspense Acount of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Comptroller has made an audit of the retailer's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said retailer, or without making said retailer, as principal obligor in said bond, a party to said suit.

Art. 20.14. Amount of Taxes, Penalties, Interest and Costs to Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any retailer under the provisions of this Chapter and all taxes collected and required to be paid by said retailer to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the personal property of any retailer, devoted to or used in his business as a retailer, which property shall include equipment, inventories on hand of every kind and character whatsoever used or usable in such business, including cash on hand and in bank, accounts and notes receivable, and any and all other personal property of every kind and character whatsoever or wherever situated devoted to such use.

Art. 20.15. Retention of Records.

Every retailer shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases and sales of items taxable under this Chapter, and his records shall show the date of receipt, the name and address of the person from whom purchased, to whom sale was made, the means of delivery, and the quantity in units and value of all such items taxable under this Chapter. Also is shall show all sales of the same as and when made from stocks on hand, or direct from the manufacturer.

Art. 20.16. Investigations by Comptroller Authorized.

For the purpose of enabling the Comptroller, or his authorized representatives, to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, they shall have the right to inspect any premises where any items taxable under this Chapter are produced, made, prepared, stored, transported, sold or offered for sale or exchange, examine all of the books and records required herein to be kept and any and all books and records that may be kept incident to the conduct of the business of said retailer, user, distributor or other person, dealing in or possessing any items taxable under this Chapter. For the foregoing pur-

poses, said authorized officers shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Art. 20.17. Cancellation of Permits.

(a) The Comptroller, or any duly authorized representative of said Comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any retailer's permit as provided under the terms of this Chapter to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Comptroller or any of the provisions of this Chapter, including any of the following offenses, which may be applicable to such permittee: (1) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Comptroller from any report filed with said Comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this Chapter; (2) failure to file any return or report required under the provisions of this Chapter; (3) the making and filing with the Comptroller any false or incomplete return or report required under the provisions of this Chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (6) refusal to permit the Comptroller, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be kept, or to inspect any premises said persons are authorized herein to inspect; (7) the engaging in any business requiring a permit under the provisions of this Chapter, without obtaining and possessing a valid permit.

(b) Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Comptroller shall give the owner of such permit or applicant therefor not less than five (5) days notice of a hearing at the office of the Comptroller, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Comptroller, or his duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Comptroller to said owner or applicant, and no other notice shall be necessary. The Comptroller may prescribe his own rules and procedure and evidence for such hearings.

(c) If, after said hearing or opportunity to be heard, the permit is cancelled by the Comptroller, or his duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the State, except by the provisions of this Article, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued from the sale, use or distribution of items taxable under this Chapter in this State.

After being given notice of any such order of cancellation, it shall be unlawful for any person to continue to operate his business under any such cancelled permit.

(d) An appeal from any order of the Comptroller, or his duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Comptroller or his duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of

the Comptroller, or his duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Art. 20.18. Certification of Records and Documents.

(a) If any retailer fails or refuses to collect and remit or to pay to the Comptroller any tax, penalties, or interest within the time and manner provided by this Chapter, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Comptroller by such retailer or his representative or a certified copy thereof certified to by the Comptroller or Chief Clerk, showing the amount of sales of items taxable under this Chapter, by such retailer or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State or any audit made by the Comptroller or his representatives, from any books or other records required to be kept or that may be kept by said retailer, when signed and sworn to by such representative as being made from said books and records of said retailer or from any books or records of any person from whom such retailer has bought, received, delivered or sold items taxable under this Chapter, or from the books and records of any transportation agency, who has transported any of said items, such report or audit shall be admissible in evidence in such proceedings, and shall be prima-facie evidence of the contents thereof; provided, however, that the prima-facie presumption of the correctness of said report or audit may be overcome upon trial, by evidence adduced by said retailer.

(b) A certificate under the seal of the Comptroller executed by said Comptroller or his Chief Clerk, setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Chapter, and that the same had been adopted, promulgated and published, or executed and filed with the Comptroller, and was in force and effect at any date or during any period specified in such certificate, shall be prima-facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule, and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents and the same provision shall apply to any bond or other instrument referred to herein.

Art. 20.19. Penalties.

(a) If any person affected by this Chapter (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter, or (2) shall fail to keep for the period of time provided herein any books or records required to be kept, or (3) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report, or (6) shall refuse to permit the Comptroller, or his authorized representatives, to inspect any premises where items taxable under this Chapter are produced, made, assembled, stored, transported, sold, or offered for sale or exchange, or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed, or (8) shall fail or refuse to comply with any provision of this Chapter or shall violate the same, or (9) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Chapter, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes.

Art. 20.20. Allocation of Revenues.

All the revenues derived from the taxes and fees imposed by this Chapter shall be placed in the General Revenue Fund of this State.

Art. 20.21. Additional Penalties.

(a) Whoever shall make a retail sale, distribution, or use of any item taxable under this Chapter upon which a tax is required to be paid without then and there holding a valid retailer's permit issued by the Comptroller, or (b) whoever as a retailer shall fail or refuse to make and deliver to the Comptroller a report containing the information required to be made and delivered to said Comptroller, or (c) whoever shall knowingly make and deliver to said Comptroller any false or incomplete report required to be made and delivered to the Comptroller by a retailer, or (d) whoever as a retailer shall fail or refuse to keep in Texas for the period of time required any books and records required to be kept by a retailer, or (e) whoever shall knowingly make any false entry or shall willfully fail to make entry in any books and records required to be kept by a retailer, shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars ($100), or more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment. In addition to the foregoing penalties, it is herein provided that a misdemeanor conviction for any of the above-named offenses shall automatically forfeit the right of said convicted person to obtain a permit as a retailer of any item taxable under this Chapter for a period of six (6) months from the date of such conviction.

Any person who shall violate, fail or refuse to comply with any provision of this Chapter for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule or regulation duly promulgated by the Comptroller, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200).

CHAPTER 21
PRIVATE CLUBS EXCISE TAX

Art. 21.01. Definitions.

As used in this Chapter the following words shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Private club" shall mean and include any place or establishment operated by any person, group, association, corporation or organization the primary function of which is to provide a place to dine, drink, dance or otherwise participate in social activities for its members or patrons and their guests or other persons, and at which place or establishment alcoholic beverages owned by members or patrons or their guests or any other person are stored under the locker system or liquor pool system or any other system for the convenience of said members or patrons or their guests or any other person for consumption at such place or establishment and where admission to such place or establishment is restricted to members or patrons and their guests or to other persons holding a membership card or other identification card or admission key or device or any other form of identification whatsoever whether paid for or not.

(b) "Non-profit private club" shall mean and include any private club as that term is defined herein, which is not organized, operated, or incorporated for the purpose of making profit, and which is owned by the general membership and operated by the general membership or a person or group of persons selected by or from the general membership and responsible to the general membership of the club. Any corporation doing business as a private club, as herein defined, in the State of Texas must be chartered in the State or licensed to do business in the State as a non-profit corporation before it can be included within this definition of non-profit private club.

(c) "Private club for profit" shall mean and include any private club,

as herein defined, that does not fall within the above definition of non-profit private clubs.

(d) "Board" shall mean the Texas Liquor Control Board.

(e) "Operator" shall mean any person, persons, firm, partnership, association, corporation, or other legal entity owning, operating or managing a private club.

Art. 21.02. Exemptions.

The provisions of this Chapter shall not apply to private clubs owned, operated or managed by organizations known as the American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans or Catholic War Veterans, and to a private club owned, operated or managed by a non-profit fraternal order or society.

Art. 21.03. Levy of Tax on Non-profit Private Clubs.

There is hereby levied and shall be collected and paid an excise tax of two per cent (2%) of the charges made by non-profit private clubs for food, beverages and any other goods or services sold by such private club to its members or patrons, or their guests or other persons using the facilities of said private club; provided, however, that this tax shall not apply to charges imposed by a non-profit private club for the rental of building space.

Art. 21.04. Levy of Tax on Private Clubs for Profit.

There is hereby levied and shall be collected and paid an excise tax of ten per cent (10%) of the charges made by private clubs for profit for food, beverages and any other goods and services sold by such private club to its members or patrons, or their guests or other persons using the facilities of said private club.

Art. 21.05. Collection of Tax.

The operator of every private club which makes a taxable sale under the provisions of this Chapter shall add the amount of said tax to the selling price which said tax shall be collected from the purchaser and said tax shall be reported and paid to the State of Texas at the time and in the manner hereinafter provided. It is the intent of this Act that the taxes herein levied shall constitute excise taxes imposed upon members or patrons, or their guests or other persons purchasing food, beverages and any other goods or services from private clubs.

Art. 21.06. Promulgation of Rules and Regulations.

The Texas Liquor Control Board is hereby vested with the power and authority to promulgate rules and regulations, not inconsistent with the provisions of the Texas Liquor Control Act or the provisions of this Chapter, for the enforcement and administration of the provisions of this Act and the collection of the taxes levied hereunder.

Art. 21.07. Payment of Tax, Reports, Audits.

(a) Every operator who shall be required to collect a tax levied by this Chapter shall on or before the 10th day of each month remit or pay over to the State of Texas at the office of the Board at Austin, Travis County, Texas, the amount of such tax required to be collected during the previous month, and at the same time, said operator shall make and deliver to the Board in Austin, Travis County, Texas, a report sworn to and executed by the operator, or his representative in charge, which shall show the date said report was executed, the name and address of said private club, and the month which the report covers, and which report shall show the taxable receipts of such private club for the report period; the gross receipts of such private club for the report period; and taxes collected by the private club during the report period. Provided, further, that the Board may prepare and furnish a form prescribing the order in which the information required herein shall be set up on said monthly report, but the failure of any operator to obtain such form from said Board shall be no excuse for the failure to file a report containing all the information required to be reported herein. Every operator, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for the period covered by the report.

(b) If any operator shall fail to remit proper taxes collected upon any sale taxable herein, the Board may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of

Texas, the operator shall pay as additional penalty any reasonable expenses included by the Board in such audit.

Art. 21.08. Penalty for Failure to Pay or Misapplication of Tax.

(a) All taxes collected hereunder by any operator, or by any manager, member, patron, owner, director, officer, agent, employee, trustee or receiver of such private club, or by any person, shall be for the use and benefit of the State of Texas, and shall be paid to the State of Texas as provided in this Chapter.

(b) If any operator, manager, member, patron, owner, director, officer, agent, employee, trustee or receiver of such private club, or any person, shall wilfully fail or refuse to pay to the State of Texas any such tax funds collected under the provisions of this Chapter, when such payment is due as provided by this Chapter, such operator, manager, member, patron, owner, director, officer, agent, employee, trustee or receiver of such private club, or such person, shall be guilty of a felony and shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment.

(c) If any operator, manager, member, patron, owner, director, officer, agent, employee, trustee or receiver of any private club, or any person, shall fraudulently misapply or convert to his own use any tax fund collected for the State of Texas under the provisions of this Chapter by such private club, or any operator, manager, member, patron, owner, director, officer, agent, employee, trustee or receiver of such private club, or by any person, which said money is required to be paid to the State of Texas under the provisions of this Chapter, such operator, manager, member, patron, owner, director, officer, agent, employee, trustee or receiver, or such person, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State penitentiary for not more than five (5) years, or by confinement in the county jail for not less than one (1) month, nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100), nor more than Five Thousand Dollars ($5,000), or by both such fine and imprisonment. Venue of prosecution under this Article shall be in Travis County, Texas, or in the County in which the offense occurs.

Art. 21.09. Permits Required.

(a) From and after the effective date of this Chapter, all persons, firms, associations, corporations, partnerships, or other legal entities in this State now engaged or which desire to become engaged in the operation of a private club upon which a tax levied herein is required to be paid, shall file a duly acknowledged application for a private club permit with the Board, said application to be accompanied by a fee of Five Dollars ($5). Said applications to be on a form prescribed by said Board to be furnished upon written request, the failure to furnish which shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place operated as a private club. Said application form shall set forth the name under which such operator transacts or intends to transact such business as a private club, the principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street, or post office addresses. The Board may require in said application such other information as it may desire. No operator shall operate a private club in the State of Texas until such application has been filed and a permit obtained.

(b) Upon receipt of the application and the bond hereinafter provided for, the Board shall issue to every operator a nonassignable, consecutively numbered permit authorizing the operation as a private club in this State from the date of the issuance of said permit, until and including the following December 31st. On or before January 1st of each year, and before any operator shall operate as a private club in this State after December 31st, an application shall be filed and a permit obtained for the calendar year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any

provision of this Chapter or any rule or regulation adopted by the Board, or any violation of the Texas Liquor Control Act, as amended. If such permit is cancelled or suspended, said operator shall not operate as a private club until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Board that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Chapter.

Art. 21.10. Bond Required.

(a) Before any permit shall be issued and before operation of a private club in Texas, every operator shall execute and file with the Board a good and sufficient surety bond, which shall run concurrently with the permit required to be obtained. The said bond shall be signed by the said operator and a good and sufficient surety company or companies authorized to do business in this State, to be approved by the Board, and in an amount to be prescribed by the Board but in no event shall said bond be less than One Hundred Dollars ($100). The said bond shall be payable to the State of Texas, and conditioned upon the full, complete, and faithful performance by the operator of all the conditions and requirements imposed upon him by this Chapter, or the rules and regulations of the Board promulgated hereunder, on a form to be prescribed by the Board expressly providing for the performance of said obligations, and the remittance and/or payment at Austin, Travis County, Texas, of all taxes collected and required to be collected for the use and benefit of the State, and all costs, penalties, and interest provided in this Chapter, provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force to support a permit, shall not for any calendar year exceed the penal sum named therein; provided, further, that any such bond, continuous in form, may be, if sufficient and acceptable to the Board, continued in effect by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit, and provided further, that the said renewal certificates, as, if and when issued, shall have all the force and effect of the original bond for the calendar year for which said renewal certificate is issued. The amount of any bond required of any operator shall be fixed by the Board and additional bond may be required by the Board at any time an existing bond becomes insufficient, unsatisfactory, or unacceptable. However, the operator may demand a reduction of his bond after six (6) months from the effective date thereof to a sum to be not more than two (2) times the highest tax said operator has collected and paid to the State for any month during the preceding six (6) months, but which shall never be less than the minimum aforesaid.

(b) The Board shall have the right, if, in its opinion, the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond. When said new bond has been furnished, the Board shall cancel the bond for which said new bond is substituted. No recoveries or execution of any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect the validity of any bond. Should any operator fail or refuse to supply a new or additional bond within ten (10) days after demand, said operator's permit shall be cancelled by the Board as herein provided.

(c) Any surety on any bond furnished by any operator as above provided shall be released and discharged from any and all liability to the State of Texas accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the Board written request to be released and discharged. Provided, however, that such request or release shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue before the expiration of said thirty-day period. The Board shall promptly on the receipt of notice of such request notify the operator who furnished such bond, and unless such operator shall within fifteen (15) days from the date of said notice, file with the Board a new bond with a surety company duly authorized to do business under the laws of the State, in the amount

and form hereinbefore in this Chapter provided, the Board shall proceed to cancel the permit of said operator in the manner herein provided. If such new bond shall be furnished by said operator as above provided, the Board shall cancel and surrender the bond for which such new bond is substituted.

(d) In lieu of giving a bond, any operator may deposit in the Suspense Account of the State Treasury money in the amount of the bond that may be required, which shall never be released until a bond is executed in lieu thereof, or until the Board has made an audit of the operator's records and authorized the same released. Provided further, that suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of said operator, or without making said operator, as principal obligor in said bond, a party to said suit.

Art. 21.11. Taxes, Penalties, Interest and Costs to Constitute Preferred Lien.

All taxes, penalties, interest and costs due by any operator under the provisions of this Chapter and all taxes collected and required to be paid by said operator to the State, shall be secured by a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time such liens originated, upon all the property of any operator, devoted to or used in business as a private club, which property shall include buildings and equipment inventories on hand of every kind and character whatsoever used or usable in such operation, including cash on hand and in bank, accounts and notes receivable, and any and all other property of every kind and character whatsoever or wherever situated devoted to such use, and each tract of land on which such building or other property is located, or which is used in carrying on such operation.

Art. 21.12. Retention of Records.

Every operator shall keep in Texas for a period of two (2) years for the inspection at all times of the Board and the Attorney General or their authorized representatives, a complete record of all business done as a private club in Texas.

Art. 21.13. Investigations.

For the purpose of enabling the Board or its authorized representatives to determine the amount of tax collected and payable to the State or to determine whether a tax liability has been incurred, the Board or its authorized representatives shall have the right to inspect any premises where a private club is operated, and to examine all of the books and records required to be kept and any and all books and records that may be kept incident to the conduct of the business of said operator. For the foregoing purposes, said authorized representatives shall also have the right to remain upon said premises for such length of time as will be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

Art. 21.14. Cancellation of Permits.

The Board, or any duly authorized representative of said Board, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of any operator's permit as provided under the terms of this Chapter, to any person who has violated or has failed to comply with any duly promulgated rule and regulation of the Board or any of the provisions of this Chapter or of the Texas Liquor Control Act, as amended, including any of the following offenses, which may be applicable to such permittee: (a) failure or refusal to remit or pay to the State of Texas any tax levied herein, which said tax is shown to have accrued and to be owing to said State by a duly verified audit made by an authorized representative of the Board from any report filed with said Board or from any books or records required to be kept or any books or records authorized to be audited by the provisions of this Chapter; (b) failure to file any return or report required under the provisions of this Chapter; (c) the making and filing with the Board any false or incomplete return or report required under the provisions of this Chapter; (d) failure to keep any books and records for the period and in the manner required to be kept; (e) the falsifying, destroying, mutilating, removing from the State, or secreting any such books and records; (f) refusal to permit the Board, Attorney General, or their authorized representatives, to inspect, audit, and examine any books and records required herein to be kept, or any pertinent records that may be

kept, or to inspect any premises said persons are authorized herein to inspect; (g) the engaging in any business requiring a permit under the provisions of this Chapter, without obtaining and possessing a valid permit.

Before any permit may be cancelled or the issuance, reinstatement, or extension thereof refused, the Board shall give the owner of such permit, or applicant therefor, not less than ten (10) days notice of a hearing at the office of the Board, in Austin, Travis County, Texas, granting said owner or applicant an opportunity to show cause before said Board, or its duly authorized representative, why such action should not be taken. Said notice shall be in writing and may be mailed by United States registered mail to said owner or applicant, at his last known address, or may be delivered by a representative of the Board, to said owner or applicant and no other notice shall be necessary. The Board may prescribe its own rules and procedures and evidence for such hearings.

If, after such hearings or opportunity to be heard, the permit is cancelled by the Board, or its duly authorized representative, all taxes which have been collected or which have accrued, although said taxes are not due and payable to the State, except by the provisions of this Article, shall become due and payable concurrently with the cancellation of such permit, and the permittee shall forthwith make a report covering the period of time not covered by preceding reports filed by said permittee, and ending with the date of cancellation and shall remit and pay to the State of Texas all taxes, which have been collected and which have accrued under the provisions of this Chapter.

After being given notice of any such order of cancellation it shall be unlawful for any operator to continue to operate a private club under any such cancelled permit.

An appeal from any order of the Board, or its duly authorized representative, cancelling or refusing the issuance, extension, or reinstatement of any permit may be taken to the District Court of Travis County, Texas, by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits with the following exceptions, which shall be considered literally, viz.: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the Board or its duly authorized representative; (2) such proceedings shall have precedence over all other causes of a different nature; (3) all cases shall be tried within thirty (30) days from the filing thereof; (4) the order, decision, or ruling of the Board, or its duly authorized representative, may be suspended or modified by the court pending a trial on the merits.

Art. 21.15. Certification of Records and Documents.

(a) If any operator fails or refuses to collect and remit or to pay to the Board any tax, penalties or interest within the time and manner provided by this Chapter, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim, in any judicial proceedings, any report filed in the office of the Board by said operator or his representative or a certified copy thereof certified to by the Board or its representative, showing the amount of taxable sales by such operator or his representative, on which such tax, penalties, or interest have not been remitted or paid to the State, or any audit made by the Board or its representatives, from any books or other records required to be kept or that may be kept by said operator, when signed and sworn to by such representative as being made from said books and records of said operator, such report or audit shall be admissible in evidence in such proceedings, and shall be prima facie evidence of the contents thereof; provided, however, that the prima facie presumption of the correctness of said report or audit may be overcome, upon trial, by evidence adduced by said operator.

(b) A certificate under the seal of the Board executed by said Board or its representative setting forth the terms of any order, rule, regulation, bond or other instrument, referred to in this Chapter, and that the same has been adopted, promulgated and published or executed and filed with the Board and was in force and effect at any date or during any period specified in such certificate, shall be prima facie evidence of all such facts and such certificates shall be admitted in evidence in any action, civil or criminal, involving such order, rule,

and regulation, and the publication thereof, without further proof of such promulgation, adoption or publication, and without further proof of its contents, and the same provisions shall apply to any bond or other instrument referred to herein.

Art. 21.16. Penalties.

If any person affected by this Chapter (a) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter, or (b) shall fail to keep for the period of time provided herein any books or records required, or (c) shall make false entry or fail to make entry in the books and records required to be kept, or (d) shall mutilate, destroy, secrete, or remove from this State, any such books or records, or (e) shall refuse to permit the Board, the Attorney General, or their authorized representatives to inspect and examine any books or records, required to be kept, or any other pertinent books for records, incident to the conduct of his business that may be kept, or (f) shall make, deliver to, and file with the Board a false or incomplete return or report, or (g) shall refuse to permit the Board, or its authorized representatives, to inspect any premises where a private club is operated, or (h) shall fail to make and deliver to the Board any return or report required herein to be made and filed or (i) shall fail or refuse to comply with any provision of this Chapter or shall violate the same, or (j) shall fail or refuse to comply with any rule and regulation promulgated hereunder by the Board, or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-five Dollars ($25) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or any other court of competent jurisdiction having venue under existing venue statutes. Provided that in addition to the penalties shown, if any operator does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said operator, within the time prescribed by law, said operator shall forfeit to the State ten per cent (10%) of the amount due. All past due taxes and penalties shall draw interest at the rate of six per cent (6%) per annum.

The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties, or interest accruing hereunder and the enforcement of the terms and provisions of this Chapter shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue statutes.

Art. 21.17. Allocation of Revenues.

All the revenue derived under this Chapter shall be deposited in the State Treasury to the credit of the General Revenue Fund of the State of Texas.

Art. 21.18. Additional Penalties.

(a) Whoever shall make a sale, taxable under the provisions of this Chapter, without then and there holding a valid operator's permit issued by the Board, or (b) whoever as an operator shall fail or refuse to make and deliver to the Board a report containing the information required by law to be made and delivered to said Board, or (c) whoever shall knowingly make and deliver to the Board any false or incomplete report required by law to be made and delivered to the Board by an operator, or (d) whoever as an operator shall fail or refuse to keep in Texas for the period of time required by law any books and records required to be kept by an operator, or (e) whoever shall knowingly make any false entry or shall wilfully fail to make entry in any books and records required to be kept by an operator shall be guilty of a misdemeanor and upon conviction, shall be punished by confinement in the county jail for not less than one (1) month nor more than one (1) year or by a fine of not less than One Hundred Dollars ($100), nor more than Five Thousand Dollars ($5,000) or by both such fine and imprisonment.

Any person who shall violate, fail or refuse to comply with any provision of this Chapter for which no penalty is provided elsewhere herein, or shall violate, or fail or refuse to comply with any rule and regulation duly promulgated by the Board, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Twenty-five Dollars

($25) nor more than Two Hundred Dollars ($200).

Art. 21.19. Texas Liquor Control Act Not Modified.

Nothing in this Chapter shall be construed as repealing, amending or modifying any provisions of the Texas Liquor Control Act. If any provision or application of this Chapter shall conflict with any provision or application of the Texas Liquor Control Act, the provision or application of the Texas Liquor Control Act shall govern.

CHAPTER 22
ADMISSIONS TAX

Art. 22.01. Reports Required.

Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission, including exhibitions in theaters, motion picture theaters, opera halls, and including horse racing, dog racing, motorcycle racing, automobile racing, and like contests and exhibitions, and including dance halls, night clubs, skating rinks, and any and all other places of amusements not prohibited by law, shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on any admission collected for dances, moving pictures, operas, plays and musical entertainments, all the proceeds of which inure exclusively to the benefit of state, religious, educational or charitable institutions, societies, or organizations, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual or for any type of exhibition or amusement conducted by and for which all of the net proceeds inure to the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas, for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock; and provided further, that entertainments such as motion pictures, operas, plays and like amusements held at a fixed and regular established motion picture theater where the admission charge is less than one dollar and one cent ($1.01) per person, and where no tax is due hereunder, shall be relieved from the filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such reports shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided.

Art. 22.02. Tax Imposed.

(1) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or fractional part thereof paid as admission to entertainments such as motion pictures, operas, plays and like amusements held at places other than at a fixed and regular established motion picture theater, where the admission charged is in excess of fifty-one cents (51¢) per person.

(2) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays and like amusements held at a fixed or regularly established motion picture theater, where the admission charged is in excess of One Dollar and Five Cents ($1.05) and not more than One Dollar and Fifteen Cents ($1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents ($1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents ($1.25).

(3) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or each fractional part thereof paid as admission to horse racing, dog racing, motorcycle racing, automobile racing, and like mechanical or animal contests and exhibitions.

(4) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or a fractional part thereof paid as admission to dance halls, night clubs, skating rinks, and any and all other like places of amusements, contests, and exhibitions where the admission charged is in excess of fifty-one cents (51¢).

(5) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place of amusement, a

tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place of amusement would be subject to taxation under the foregoing provisions.

(6) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected.

Art. 22.03. Records Required.

Every person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall make and keep records in Texas at headquarters office, or if an itinerant producer the place where records are to be kept shall be at the address shown on remittance report if outside the boundaries of Texas, or at a place to be named on said remittance report if to be kept in Texas, for a period of two (2) years. Said records shall correctly reflect (1) the date of event for which a ticket of admission was required, (2) the value of each ticket of admission, (3) number of patrons admitted by each ticket of admission, and (4) if admitted gratuitously, the number of patrons so admitted. Said records shall be open to the inspection of the Comptroller and the Attorney General, or their duly authorized agents. If any person, firm, association of persons, or corporation shall fail to keep such records or shall refuse to allow the inspection of such records as above provided for, such person, firm, association of persons, or corporation shall forfeit to the State of Texas as a penalty not less than Twenty-five Dollars ($25) nor more than One Thousand Dollars ($1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties by suit shall be in Travis County, Texas.

Art. 22.04. Penalties.

(1) In the event any person, firm, association of persons, or corporation who operates any place of amusement as designated in this Chapter upon which an admission tax is due shall fail or refuse to pay said tax to the Treasurer of this State on or before the date provided in this Chapter, he shall forfeit to the State of Texas not less than Twenty-five Dollars ($25) nor more than One Hundred Dollars ($100) for each violation, and each day's delinquency shall constitute a separate offense. Venue for the collection of such penalties by suit shall be in Travis County, Texas.

(2) The State of Texas shall have a prior lien for all delinquent taxes and penalties provided for in this Chapter on all property used by the owner or operator of any place of amusement as designated in this Chapter, and the Attorney General of the State of Texas may file suit for the collection of such tax and penalties in any court of competent jurisdiction in Travis County, Texas, and for the foreclosure of such lien, and may enjoin the operation of any such business until such taxes and penalties are paid.

(3) Any person managing or controlling any place of amusement required to file a report or keep records as provided in this Chapter, who shall fail or refuse to file such report on the date provided in this Chapter, or make and keep such records, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than One Hundred Dollars ($100) and such punishment shall be in addition to the civil penalties herein provided for. The venue for such prosecution is hereby conferred upon the courts of Travis County, Texas.

CHAPTER 23

ALLOCATION OF TAX REVENUES

Article 23.01. Enforcement and administration of funds; allocation.

All revenues collected from the taxes imposed by the Chapters of Title 122a, after deduction of the portion allocated for collection, enforcement, and administration purposes by various Chapters of such Title, shall be allocated as follows:

Chapter or Article of this Title Levying the Tax	Portion Allocated to the Available School Fund	Portion Allocated to the Omnibus Tax Clearance Fund (Established by Acts 1941, 47th Leg., Ch. 184, as amended)	Portion Allocated to the General Revenue Fund
Chapter 2 (Poll Tax)	2/3		1/3

Chapter or Article of this Title Levying the Tax	Portion Allocated to the Available School Fund	Portion Allocated to the Omnibus Tax Clearance Fund (Established by Acts 1941, 47th Leg., Ch. 184, as amended)	Portion Allocated to the General Revenue Fund
Chapter 3 (Natural Gas Tax)	1/4	3/4	
Chapter 4 (Oil Production Tax)	1/4	3/4	
Chapter 5 (Sulphur Tax)	1/4	3/4	
Chapter 6 (Motor Vehicle Sales and Use Tax)	1/4	3/4	
Chapter 7 (Cigarette Tax Article 7.02)	18.75%		81.25%
(Cigarette Tax Article 7.06)			All
Chapter 8 (Tobacco Products Tax)			All
Chapter 9 Motor Fuel (Gasoline)	Allocated as provided in Article 9.25, Chapter 9, of this Act.		
Chapter 10 (Special Fuels Tax)	Allocated as provided in Article 10.22, Chapter 10, of this Act.		
Chapter 11 (Miscellaneous Gross Receipts Taxes)	1/4	3/4	
Chapter 12 (Franchise Tax)			All
Chapter 13 (Coin Operated Machines Tax)	1/4	3/4	
Chapter 14 (Inheritance Tax)			All
Chapter 15 (Additional Inheritance Tax)			All
Chapter 16 (Stock Transfer Tax)	1/4	3/4	
Chapter 17 (Store and Exempt Store Tax)	1/4		3/4
Chapter 18 (Cement Production Tax)	1/4	3/4	
Chapter 19 (Misc. Occupation Taxes including Oil Well Servicing)	1/4	3/4	
Chapter 20 (Miscellaneous Excise Taxes)			All
Chapter 21 (Private Clubs Excise Tax)			All
Chapter 22 (Admissions Tax)	1/4	3/4	

Section 2. (1) Section 21 of Article 1, Chapter 467, Acts of the Second Called Session of the Forty-fourth Legislature as last amended by Section VIII of Chapter 402, Acts of the Fifty-second Legislature, Regular Session, 1951, compiled as Article 666-21, Vernon's Annotated Penal Code of Texas, shall be and is hereby amended so as to read hereafter as follows:

"Section 21. There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

"(a) A tax of One Dollar and Sixty-eight Cents ($1.68) per gallon on each gallon of distilled spirits, providing the minimum tax on any package of distilled spirits shall be $0.105.

"(b) A tax of $0.132 on each gallon of vinous liquor that does not contain over fourteen per cent (14%) of alcohol by volume.

"(c) A tax of $0.264 on each gallon of vinous liquor containing more than fourteen per cent (14%) and not more than twenty-four per cent (24%) of alcohol by volume.

"(d) A tax of $0.330 on each gallon of artificially carbonated and natural sparkling vinous liquor.

"(e) A tax of $0.660 on each gallon of vinous liquor containing alcohol in excess of twenty-four per cent (24%) by volume.

"(f) A tax of $0.165 on each gallon of malt liquor containing alcohol in excess of four per cent (4%) by weight.

"The term 'first sale' as used in Article I of this Act shall mean and include the first sale, possession, distribution, or use in this State of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this State.

"The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act; provided, however, any holder of a permit as a retail dealer as that term is defined herein shall be held liable for any tax due on any liquor sold on which the tax has not been paid.

"It shall be the duty of each person who makes a first sale of any liquor in this State to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rule and regulation of the Board. The Board shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container, irrespective of any other provision of this Act. And any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this State, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Board. Any person authorized to export liquor from this State having in his possession any liquor intended for shipment to any place without the State, shall keep such liquors in a separate compartment from that of liquors intended for sale within the State so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the State a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the State. When such liquors are so kept and so stamped, no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of twenty-five cents (25¢) shall be made for every such stamp, except that a charge of ten cents (10¢) shall be made for each such stamp placed on vinous or malt liquors of twenty-four per cent (24%) alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this State shall furnish to the Board duplicate copies of all invoices for the sale of such liquors, within twenty-four (24) hours after such liquors have been removed from their place of business."

(2) It is further provided that such portion of the tax provided by the amendment to Section 21 of the Texas Liquor Control Act by Subsection (1) of Section 2 of this Act which represents an increase in the tax rate on liquor shall apply and attach to

all liquor which shall be in the possession of any person for the purpose of sale. Every person having possession of any liquor for the purpose of sale shall on the effective date of this Act render and submit to the Texas Liquor Control Board at Austin, Travis County, Texas, a true and correct sworn inventory of all such liquors, setting forth in detail the size of containers and the quantity thereof and shall attach to such sworn inventory a cashier's check or certified check payable to the State of Texas in an amount equal to the portion of said tax representing an increase in the tax rate on such liquor. The sworn inventory shall be rendered upon a form to be prescribed and furnished by the Texas Liquor Control Board. The sworn inventory with cashier's check or certified check attached shall be placed in the United States mail, addressed to the Texas Liquor Control Board at Austin, Travis County, Texas, within twenty-four (24) hours after the effective date of this Act, and a true, correct and exact copy thereof must be retained by the person making such report. Failure or refusal to render and submit such inventory and cashier's check or certified check on or before the time specified above or the wilful falsification of such inventory shall be deemed sufficient grounds for the cancellation of any permit or license by the Board.

Sec. 3. Construction of this Act. With respect to the provisions of this Act which tax transactions subject to taxation by the State prior to the effective date of this Act, this Act shall be considered to be the equivalent of a revision by amendment even though it is in the form of an enactment of new law and repeal of the old law. This Act shall be construed to make a substantive change in the prior law only where the language of this Act manifests a clear intent to make such a change.

Sec. 4. Savings Clause. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. Taxes incurred under any law repealed by this Act are an obligation within the meaning of this section. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

Sec. 5. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Sec. 6. Appropriation. Whenever any allocation is made by this Act for administration to the collection agency of the State collecting such tax such allocation shall be subject to appropriation by the Legislature; and appropriation by the Legislature of such funds or any part thereof shall be in lieu of the percentages allocated by this Act.

Sec. 7. Repealer. (a) Wherever used in this Section, Article numbers are references to Vernon's Annotated Civil Statutes of Texas except where such Article numbers are designated as Articles of the Revised Civil Statutes of Texas, 1925.

(b) The following statutes and acts, together with all laws or parts of laws in conflict herewith, are hereby repealed:

Revised Civil Statutes of Texas, 1925, Article 7046 (Poll Tax) as amended; Article 7071 (Oil Production Tax) as amended; Article 7066 (Sulphur Tax) as amended; Article 7065 (Motor Fuel Tax) as amended; Article 7058 (Express Companies) as amended; Article 7059 (Telegraph Companies) as amended; Article 7060 (Gas, Electric Light, Electric Power and Water Works) as amended; Article 7061 (Collecting Agencies) as amended; Article 7062 (Car Companies) as amended; Article 7063 (Sleeping, Palace or Dining Car Companies) as amended; Article 7068 (Dealers in Pistols) as amended; Article 7069 (Textbook Publishers) as amended; Article 7070 (Telephone Companies) as amended; Articles 7084 through 7097 (Franchise Tax) as amended; Articles 7117 through 7144 (Inheritance Tax) as amended; Article 7057, as amended; Article 7076, as amended; Article 7078, as amended.

Acts 1933, 43rd Legislature, Chapter 192, Section 2b, as amended, compiled as Article 7144a, as amended (Additional Inheritance Tax); Acts 1937, 45th Legislature, Chapter 310, as amended, compiled as Article 7047j; Acts 1950, 51st Legislature, First Called Session, Chapter 2, Article XX, compiled as Article 7057e.

Revised Civil Statutes of Texas, 1925, Article 7047, Section 1 (Itinerant Merchants); Section 2 (Traveling Vendors of Patent Medicines); Section 3 (Itinerant Physicians); Section 5 (Clock Peddlers); Section 6 (Auctioneers); Section 7 (Brokers and Factors); Section 9 (Ship Brokers); Section 10 (Insurance Adjusters); Section 13 (Pawnbrokers); Section 14 (Loan Brokers); Section 15 (Money Lenders); Section 16 (Credit Reporting); Section 21 (Street Car Companies); and Section 22a (Theaters) as added by Acts 1930, 41st Legislature, Fifth Called Session, Chapter 35; Section 24 (Circus and Shows); Section 25 (Menageries, Museums, Carnivals); Section 26 (Waxworks); Section 27 (Wrestling Matches and Acrobatic Performances); Section 28 (Sleight-of-Hand Performances); Section 29 (Medicine Shows); Section 30 (Concerts); Section 31 (Rodeos); Section 32 (Baseball Parks); Section 33 (Race Tracks); Section 34 (Skating Rinks); Section 35 (Shooting Galleries); Section 36 (Nine and Ten Pin Alleys); Section 37 (Hobby Horses); Section 38 (Dealers in Cannon Crackers); Section 40b (Sulphur Producers) as added by Acts 1941, 47th Legislature, Chapter 184, Article III; Section 41 (Textbook Publishers) as added by Acts 1930, 41st Legislature, Fifth Called Session, Chapter 37, Section 1; Section 41a (Cement Distributors) as added by Acts 1931, 42nd Legislature, Chapter 212, Section 1; and Sections 42, 43 and 44 (Administrative Procedures) as such sections have been amended.

Acts 1936, 44th Legislature, 3rd Called Session, Chapter 495, Article III, Section 6, as amended, compiled as Article 7047a-19 (Admissions Tax).

Acts 1936, 44th Legislature, Third Called Session, Chapter 495, Article IV, Section 10, as amended, compiled as Articles 7047f, 7047h and 7047i, (Prizes and Awards Tax).

Also Acts 1941, 47th Legislature, Ch. 184, Article X, compiled as Article 7047l (Luxury Excise Tax on Radios, Cosmetics, Playing Cards, Television) as amended by Acts 1950, 51st Legislature, First Called Session, Ch. 2, Article X, Section 1, as amended by Acts 1951, 52nd Legislature, Ch. 402, Sec. X, as amended by Acts 1955, 54th Legislature, compiled as Article 7047l-1.

Also Acts 1931, 42nd Legislature, Regular Session, Ch. 73 (Natural Gas Production Tax) as amended; also Acts 1933, 43rd Legislature, Regular Session, Ch. 153 (Cigarette Tax) as amended; also Acts 1941, 47th Legislature, Ch. 184, Art. VI, (Motor Vehicle Retail Sales Tax) as amended.

Also Acts 1935, 44th Legislature, First Called Session, Ch. 400, as amended by added Acts 1950, 51st Legislature, First Called Session, Ch. 2, Article XVIII, Section 1, as amended by Acts 1951, 52nd Legislature, Ch. 402, Article XVI, Section 1, as amended by Acts 1953, 53rd Legislature, Ch. 142, Section 2, compiled as Vernon's Annotated Texas Penal Code Art. 1111d, (Store and Exempt Store Tax).

Acts 1941, 47th Legislature, Ch. 184, Art. XV, as amended by Acts 1947, 50th Legislature, Ch. 238, Section 1, compiled as Article 7047m (Stock Transfer and Sales Tax), as amended by Added Acts 1950, 51st Legislature, First Called Session, Ch. 2, Art. XIV, Section 1, compiled as Article 7047m, Section 1½, as amended by Acts 1951, 52nd Legislature, Ch. 402, Section XVII.

Acts 44th Legislature, Third Called Session, Ch. 495, Article III, Section 4, as amended. Acts 1951, 52nd Legislature, Ch. 379, Section 1, as amended by Added Acts 1951, 52nd Legislature, Ch. 380, Section 1, as amended by Acts 1953, 53rd Legislature, Ch. 49, Section 1, as amended by Acts 1957, 55th Legislature, Ch. 34, Section 1, compiled as Articles 7047a-2 through 7047a-18, (Coin Operated Machines Tax).

Acts 1941, 47th Legislature, Ch. 184, Art. XVI, compiled as Article 7060a, (Oilwell Servicing Tax) as amended by Acts 1951, 52nd Legislature, Ch. 402, Section XIV; and Acts 1954, 53rd Legislature, First Called Session, Ch. 2, Article V, Section 1.

Acts 1941, 47th Legislature, Ch. 184, Art. XIV, Sec. 2, codified as Art. 7066b (Motor Carriers, etc.), as amended, also Acts 1941, 47th Legislature, Ch. 389, Sec. 2. Acts 1951, 52nd Legislature, Ch. 402, Sec. XIII, also Acts 1954, 53rd Legislature,

First Called Session, Ch. 2, Art. VI, Sec. 2.

Sec. 8. Effective Date. This Act shall be effective September 1, 1959.

Sec. 9. Emergency. The necessity for revising and rearranging the taxes referred to in this Act and the pressing necessity to realize additional revenue for the State creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after September 1, 1959, and it is so enacted.

The Conference Committee Report on H. B. No. 18 was adopted by the following vote:

Yeas—24

Aikin	Martin
Baker	Moffett
Bradshaw	Moore
Colson	Parkhouse
Crump	Phillips
Dies	Ratliff
Fly	Reagan
Fuller	Roberts
Hardeman	Secrest
Hazlewood	Smith
Hudson	Weinert
Lane	Willis

Nays—7

Gonzalez	Owen
Herring	Rogers
Kazen	Wood
Krueger	

Message from the House

Hall of the House of Representatives
Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. C. R. No. 9, Validating the conveyance of certain property in Harris County, Texas by the Texas National Guard Armory Board to the Lusk Drilling Company.

H. C. R. No. 18, Granting permission to Ray Cyphers and wife, Ruth Cyphers, to sue the State of Texas and the State Highway Commission.

Respectfully submitted,
DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Senate Resolution 63

Senator Aikin offered the following resolution:

Whereas, We are honored today to have as a visitor in the Senate Hon. Claude H. McCorkle of Sulphur Springs; and

Whereas, We desire to welcome this distinguished visitor to the Capitol Building and Capital City; now, therefore, be it

Resolved, That his presence be recognized by the Senate of Texas and that he be extended the official welcome of the Senate and the privilege of the floor for today.

The resolution was read and was adopted.

Senator Aikin by unanimous consent presented Mr. McCorkle to the Members of the Senate.

Report of Standing Committee

Senator Krueger by unanimous consent submitted the following report:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred S. B. No. 48, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

KRUEGER, Chairman.

Senate Bill 47 Ordered Not Printed

On motion of Senator Crump and by unanimous consent S. B. No. 47 was ordered not printed.

Senate Bill 48 Ordered Not Printed

On motion of Senator Crump and by unanimous consent S. B. No. 48 was ordered not printed.

Senate Bill 9 With House Amendments

Senator Baker called S. B. No. 9

from the President's table for consideration of the House amendments to the bill.

The President laid the bill and House amendments before the Senate, and the House amendments were read.

Senator Baker moved that the Senate concur in the House amendments.

Senator Hudson moved as a substitute motion that the Senate do not concur in the House amendments and that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

Senator Phillips moved to table the substitute motion by Senator Hudson.

Question on the motion to table, Yeas and Nays were demanded.

The motion to table the substitute motion was lost by the following vote:

Yeas—11

Baker	Krueger
Colson	Phillips
Dies	Reagan
Fuller	Rogers
Gonzalez	Willis
Kazen	

Nays—19

Aikin	Moffett
Bradshaw	Owen
Crump	Parkhouse
Fly	Ratliff
Hardeman	Roberts
Hazlewood	Secrest
Herring	Smith
Hudson	Weinert
Lane	Wood
Martin	

Absent

Moore

Question next on the substitute motion by Senator Hudson to not concur and that a Conference Committee be appointed to adjust the differences between the two Houses on the bill, the motion prevailed.

Record of Votes

Senators Krueger, Phillips, Baker, Reagan, Gonzalez and Colson asked to be recorded as voting "Nay" on the motion by Senator Hudson.

Message from the Governor

The following message received from the Governor today was read and was filed with the Secretary of the Senate.

Austin, Texas,
July 10, 1959.

To the Members of the Fifty-sixth Legislature, Second Called Session:

I hereby submit as an additional subject for consideration in this Second Called Session legislation authorizing the refunding of the bonds of the State of Texas now held by the several premanent funds of the State.

Respectfully submitted,
PRICE DANIEL,
Governor.

House Concurrent Resolution on First Reading

The following House Concurrent Resolution received from the House, was read the first time and referred to the Committee indicated:

H. C. R. No. 18, To the Committee on Jurisprudence.

Report of Standing Committee

Senator Lane by unanimous consent submitted the following report:

Austin, Texas,
July 10, 1959.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Jurisprudence, to whom was referred H. C. R. No. 18, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Senate Bill 32 on Second Reading

On motion of Senator Herring and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S. B. No. 32, A bill to be entitled "An Act to transfer to the Central Education Agency all lands, funds, and property belonging to or purchased for the Texas Blind, Deaf and Orphan School, providing that the Central Education Agency shall have exclusive jurisdiction and control over the Texas Blind, Deaf and Orphan School; prescribing certain duties of

the Commissioner of Education; providing for jurisdiction over all physical assets; providing that all appropriations, grants, and gifts made for the benefit of the Texas Blind, Deaf and Orphan School shall be administered and expended by the Central Education Agency; and declaring an emergency."

The bill was read second time and passed to engrossment.

Record of Votes

Senators Martin and Fly asked to be recorded as voting "Nay" on the passage of S. B. No. 32 to engrossment.

Senate Bill 32 on Third Reading

Senator Herring moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 32 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—29

Aikin	Moffett
Baker	Moore
Bradshaw	Owen
Colson	Parkhouse
Crump	Phillips
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Krueger	Willis
Lane	Wood
Martin	

Nays—2

Fly	Hardeman

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—28

Aikin	Fuller
Baker	Gonzalez
Bradshaw	Hazlewood
Colson	Herring
Crump	Hudson
Dies	Kazen
Krueger	Reagan
Lane	Roberts
Moffett	Rogers
Moore	Secrest
Owen	Smith
Parkhouse	Weinert
Phillips	Willis
Ratliff	Wood

Nays—3

Fly	Martin
Hardeman	

House Concurrent Resolution 14 on Second Reading

The President laid before the Senate on its second reading the following resolution:

H. C. R. No. 14, Suspending Joint Rules to permit consideration of S. B. No. 10 at any time.

The resolution was read and was adopted.

House Bill on First Reading

The following bill received from the House, was read the first time and referred to the Committee indicated:

H. B. No. 36, To the Committee on State Affairs.

Adjournment

On motion of Senator Fly the Senate at 4:23 o'clock p.m. adjourned until 10:30 o'clock a.m. on Monday, July 13, 1959.

Record of Votes

Senators Colson and Moffett asked to be recorded as voting "Nay" on the motion to adjourn.

ELEVENTH DAY

(Monday, July 13, 1959)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Aikin	Hazlewood
Baker	Herring
Bradshaw	Hudson
Colson	Kazen
Dies	Krueger
Fly	Lane
Gonzalez	Martin
Hardeman	Moffett