

SUBJECT: Halving the gross receipts tax on mixed beverages, adding a sales tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For — Bob Borochoff, Anthony Duncan, and Richie Jackson, Texas Restaurant Association; John Gessner, Front Burner Restaurants; (*Registered, but did not testify*: Kevan Fenderson and John Kroll, Brinker Intl.; Adam Goldman, Darden; Mike Hamilton, and Scott Plowman, Texas Restaurant Association; Scott Joslove, Texas Hotel and Lodging Association)

Against — Michael Klein, Texas Bar and Nightclub Alliance; (*Registered, but did not testify*: Doug Davis and Tom Spilman, Wholesale Beer Distributors of Texas; Jennifer Houlihan and James Moody, Austin Music People; Afshin Mohammadzadeh; Houman Mosharraf; Amir Rostami, The Aquarium, Texas Bar and Night Club Alliance)

On — Jason Smith, Texas Craft Brewers Guild; (*Registered, but did not testify*: Donald Dillard, Comptroller; Steve Greinert, TABC)

BACKGROUND: Tax Code, sec. 183.021 places a 14 percent tax on the gross receipts of a permit holder received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises.

DIGEST: CSHB 3572 would change the way mixed beverages are taxed in Texas.

**Gross-receipts tax.** The bill would lower the gross-receipts tax on the permit holder's sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises from 14 percent to 7 percent.

The bill would apply existing statutory provisions relating to security requirements, audit frequency, and credits and refunds for bad debts to the mixed beverage gross receipts tax.

**Sales tax.** HB 3572 would impose an 8.25 percent sales tax on mixed beverages sold, prepared, or served by a business permitted to sell mixed beverages and on the ice and each non-alcoholic beverage sold, prepared, or served by a permit holder for the purpose of being mixed with an alcoholic beverage and consumed on the premises.

The bill would exclude existing statutory rules applicable to the general sales tax on the sale of taxable items regarding reimbursement for the collection of sales tax and the discount for prepayment of sales taxes. Further, a sale to a permit holder of an item that would be taxable under the mixed beverage sales tax would not be eligible for an exemption from the tax as a sale for resale under Tax Code, sec. 151.302.

The bill also would make conforming changes in the Tax Code.

CSHB 3572 would take effect on January 1, 2014. The bill would not affect tax liability accrued before the effective date.

**SUPPORTERS  
SAY:**

CSHB 3572 would promote transparency and equity in alcohol taxes. The bill would offset the opaque 14 percent gross-receipts tax on alcoholic mixed beverages with a more transparent sales tax. Under a gross-receipts tax, the permit holder must pay the tax and cannot pass it on to the consumer. This means permit holders must build it into the cost they will charge consumers. State law and regulations promulgated by the comptroller have gone back and forth on how permit holders can explain the gross-receipts tax to their customers. This has been difficult on consumers and permit holders alike.

Sales taxes are much more transparent. It is much easier for a consumer to determine the impact of a sales tax because it appears in a receipt and because consumers know it applies to the entire stated cost.

The bill would bring equity as well. Currently, permit holders who have a mixed beverage permit must pay a 14 percent gross-receipts tax on all sales of mixed beverages, beer, and wine. But permit holders who have a beer and wine permit only charge sales tax on their sales of beer and wine.

It does not make sense to tax the same beverages differently and CSHB 3572 would be a significant step toward tax equity.

Any increased tax on the customer would be outweighed by improvements in transparency and equity, which are defining characteristics of good tax policy. In addition, the bill would raise significant revenue. According to the fiscal note, the bill would raise \$21.3 million for the state and would raise \$6.1 million for cities and counties in fiscal 2014-15.

**OPPONENTS  
SAY:**

CSHB 3572 would be anti-taxpayer because it would place an additional tax on mixed beverages. Under current law, there is a 14 percent gross-receipts tax. The bill would replace it with a 7 percent gross-receipts tax and an 8.25 percent sales tax. Consumers would see an increase in what they paid because permit holders would not likely reduce the sales price of mixed beverages even when the tax they would pay, the gross-receipts tax, was cut in half.

**NOTES:**

According to the fiscal note, the tax changes in CSHB 3572 would result in an increase to the state of \$21.3 million in general revenue related funds in fiscal 2014-15. Cities and counties would be estimated to gain a combined \$6.1 million over the same period.