TAX CODE—TITLE 2

CHAPTER 389

H. B. No. 1708

An Act adopting Title 2, Tax Code, a nonsubstantive revision of the statutes relating to the imposition, administration, collection and enforcement of, and the allocation of revenue from, state taxes, other than ad valorem property taxes, and making conforming amendments.

Be it enacted by the Legislature of the State of Texas:

Adoption of Title

Section 1. Title 2, Tax Code, is adopted to read as follows:

TITLE 2. STATE TAXATION

SUBTITLE A. GENERAL PROVISIONS

Chapter
101. General Provisions

SUBTITLE B. ENFORCEMENT AND COLLECTION

111. Collection Procedures
112. Taxpayers' Suits
113. Tax Liens

SUBTITLE C. TAX CLEARANCE FUND

131. Tax Clearance Fund

SUBTITLE D. COMPACTS AND UNIFORM LAWS

141. Multistate Tax Compact

SUBTITLE E. SALES, EXCISE, AND USE TAXES

151. Limited Sales, Excise, and Use Tax
152. Motor Vehicle Sales Tax
153. Motor Fuels Tax
154. Cigarette Tax
155. Tobacco Products and Cigar Tax
156. Hotel Occupancy Tax

SUBTITLE F. FRANCHISE TAX

171. Franchise Tax

SUBTITLE G. GROSS RECEIPTS TAXES

Chapter
181. Cement Production Tax
182. Miscellaneous Gross Receipts Taxes

SUBTITLE H. BUSINESS PERMIT TAXES

191. Miscellaneous Occupation Taxes
192. Quotation Services

SUBTITLE I. SEVERANCE TAXES

201. Gas Production Tax
202. Oil Production Tax
203. Sulphur Production Tax

SUBTITLE J. INHERITANCE TAX

211. Inheritance Tax

SUBTITLE K. POLL TAX

251. Poll Tax

TITLE 2. STATE TAXATION

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 101. GENERAL PROVISIONS

Section
101.001. Purpose of Title
101.002. Construction of Code
101.003. Definitions
101.004. Common Law
101.005. Grammatical Errors: Punctuation
101.006. Fiscal Year
101.007. References to State Officers
101.008. Occupation Taxes Levied by Local Governments

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 101. GENERAL PROVISIONS

Sec. 101.001. Purpose of Title

(a) This title is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b—1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent state tax laws more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible. (New.)

Sec. 101.002. Construction of Code

The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of each provision of this title, except as specifically provided by this title. (New.)

Sec. 101.003. Definitions

In this title:

(1) "Comptroller" means the comptroller of public accounts of the State of Texas.

(2) "Month" means a calendar month.

(3) "Year" means a calendar year.

(4) "Effects" means personal property or an interest in personal property.

(5) "Affidavit" means a statement in writing of a fact signed by the party making the statement, sworn to before some officer authorized to administer oaths, and officially certified by the officer under the officer's seal of office.

(6) "Officer" means a state officer.

(7) "Standard time" means that designation of time prescribed by Chapter 359, Acts of the 50th Legislature, Regular Session, 1947 (Article 23a, Vernon's Texas Civil Statutes).

(8) "Taxpayer" means a person liable for a tax imposed by this title.

(9) "Attorney general" means the attorney general of the State of Texas.

(10) "Treasurer" means the state treasurer of Texas.

(11) "Report" means a tax return, declaration, statement, or other document required to be filed with the comptroller by a provision of this title. (Title 122A, Art. 1.01 (part); Art. 7.01, Secs. (11), (12); Art. 20.01, Sec. (Q); Art. 1.13, Sec. (f).)

Sec. 101.004. Common Law

The rule that statutes in derogation of the common law shall be construed strictly does not apply to this title. (Title 122A, Art. 1.01 (part).)

Sec. 101.005. Grammatical Errors: Punctuation

(a) A grammatical error does not vitiate a law, and when a sentence or clause is without meaning, words and clauses may be transposed to determine the intended meaning.

(b) The punctuation of a sentence does not control or affect the intention of the legislature in the enactment of this title. (Title 122A, Art. 1.01 (part).)

Sec. 101.006. Fiscal Year

Article 12, Revised Civil Statutes of Texas, 1925, as amended, establishing a fiscal year for the state, applies to this title. (Title 122A, Art. 1.01 (part).)

Sec. 101.007. References to State Officers

A reference in this title to the comptroller, the treasurer, or another officer includes authorized representatives and employees of the officer unless the provision indicates that only the officer is intended in the reference. (New.)

Sec. 101.008. Occupation Taxes Levied by Local Governments

No city, county, or other political subdivision may levy an occupation tax imposed by this title unless specifically permitted to do so by state law. (Title 122A, Art. 1.09.)

SUBTITLE B. ENFORCEMENT AND COLLECTION

CHAPTER 111. COLLECTION PROCEDURES

SUBCHAPTER A. COLLECTION DUTIES AND POWERS

Section

111.001. Comptroller to Collect Taxes
111.002. Comptroller's Rules; Compliance; Forfeiture
111.003. Comptroller's Investigations
111.004. Power to Examine Records and Persons
111.0041. Records
111.0042. Sampling in Auditing; Projecting Assessments
111.0043. General Audit and Prehearing Powers
111.0044. Special Procedures for Third-Party Orders and Subpoenas
111.005. Governmental Entities to Cooperate
111.006. Confidentiality of Information
111.007. Criminal Penalties for Disclosing Federal Tax Information
111.008. Deficiency Determination
111.009. Redetermination
111.010. Suit to Recover Taxes
111.011. Injunction to Halt Business Activities
111.012. Security for the Payment of Taxes

Section
111.013. Evidence: Occupation Tax Claims
111.014. Evidence: Copies of Graphic Matter
111.015. Remedies Cumulative
111.016. Payment to the State of Tax Collections

[Sections 111.017–111.050 reserved for expansion]

SUBCHAPTER B. TAX REPORTS AND PAYMENTS

111.051. Reports and Payments; Due Dates
111.052. Form of Report
111.053. Filing Dates: Weekends and Holidays
111.054. Timely Filing: Mail Delivery
111.055. Timely Filing: Diligence
111.056. Filing Within 10 Days: Penalty and Interest
111.057. Extension for Filing Report
111.058. Filing Extension Because of Natural Disaster
111.059. Oath Not Required
111.060. Interest on Delinquent Tax

[Sections 111.061–111.100 reserved for expansion]

SUBCHAPTER C. SETTLEMENTS, REFUNDS, AND CREDITS

111.101. Settlement Before Redetermination
111.102. Settlement on Redetermination
111.103. Settlement of Penalty and Interest Only
111.104. Refunds
111.105. Tax Refund: Hearing
111.106. Interest on Refund or Credit
111.107. When Refund or Credit is Permitted
111.108. Recovery of Refund or Credit

[Sections 111.109–111.200 reserved for expansion]

SUBCHAPTER D. LIMITATIONS

111.201. Assessment Limitation
111.202. Suit Limitation
111.203. Agreements to Extend Period of Limitation
111.204. Beginning of Period of Limitation
111.205. Exception to Assessment Limitation
111.206. Exception to Limitation: Determination Resulting From Administrative Proceeding
111.207. Tolling of Limitation Period

[Sections 111.208–111.250 reserved for expansion]

SUBCHAPTER E. ASSIGNMENT OF TAX CLAIMS

111.251. Assignment on Payment by Third Person
111.252. Notice to Taxpayer
111.253. Venue for Enforcement of Assigned Claims
111.254. Reassignment
111.255. Recording of Assignment

SUBTITLE B. ENFORCEMENT AND COLLECTION

CHAPTER 111. COLLECTION PROCEDURES

SUBCHAPTER A. COLLECTION DUTIES AND POWERS

Sec. 111.001. Comptroller to Collect Taxes

The comptroller shall collect the taxes imposed by this title except as otherwise provided by this title. (Acts 47th Legis., Reg. Sess., Ch. 631, Sec. 1.)

Sec. 111.002. Comptroller's Rules; Compliance; Forfeiture

(a) The comptroller may adopt rules that do not conflict with the laws of this state or the constitution of this state or the United States for the enforcement of the provisions of this title and the collection of taxes and other revenues under this title.

(b) A person who does not comply with a rule made under this section forfeits to the state an amount of not less than $25 nor more than $500. Each day on which a failure to comply occurs or continues is a separate violation.

(c) If a forfeiture is not paid, the attorney general shall file suit to recover the forfeiture in a court of competent jurisdiction in Travis County or in any other county where venue lies.

(d) Any other provision of this code that imposes a different penalty for the violation of a comptroller's rule made for the enforcement or collection of a specific tax imposed by this title prevails over the penalty provided by this section. (Title 122A, Art. 1.10; Acts 47th Legis., Reg. Sess., Ch. 631, Secs. 2, 3, 6.)

Sec. 111.003. Comptroller's Investigations

(a) On the governor's request, the comptroller shall:

(1) investigate the books and accounts of assessing and collecting officers of the state and other officers or persons receiving, disbursing, or possessing public funds;

(2) perform other duties and make investigations in relation to public funds as requested by the governor; and

(3) investigate any state institution and its policies, management, and operation, including the fiscal affairs and the conduct and efficiency of any state employee of the institution.

(b) The comptroller shall report to the governor the results of an investigation requested under Subsection (a) of this section. The report must be written and include:

(1) a description of each violation of the revenue laws;

(2) a description of the failure, if any, to enforce revenue laws;

(3) the name of each person reasonably believed to have committed a violation or to have been guilty of nonfeasance; and

(4) if a state institution is investigated, a description of the expenditures of the institution and of all sums of money due the state, the ascertainment and collection of which does not devolve upon other officers of the state under existing law.

(c) A person connected with the public service shall submit all books, records, and accounts to the comptroller without delay on the request of the comptroller when conducting an investigation under Subsection (a) of this section.

(d) On the receipt of a report that indicates a violation of revenue laws or neglect of duty, the governor shall notify the attorney general, who shall institute criminal and civil proceedings in the name of the state against persons accused of a violation or neglect of duty.

(e) The comptroller may at any time examine and investigate the expenditure of appropriated money for a state institution or for any other purpose or for improvements made by the state on state property or money received and disbursed by any board authorized to receive and disburse state money. The comptroller shall investigate any state institution when required by information coming to his own knowledge. (Title 122A, Art. 1.03.)

Sec. 111.004. Power to Examine Records and Persons

(a) For the purpose of carrying out the terms of this title the comptroller may 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 of their officers or employees under oath.

(b) If any person refuses to permit an examination or answer any question authorized by Subsection (a) of this section, the comptroller may certify the fact of the refusal to the secretary of state, who shall immediately forfeit the charter or the permit to do business of the person until the examination as required is completed.

(c) No charge may be made by the comptroller to examine a book, record, or paper or to question an officer or employee.

(d) The comptroller's authority to examine books, records, and papers under this chapter extends to all books, records, papers, and other objects which the comptroller determines are necessary for conducting a complete examination under this title. (Title 122A, Art. 1.031, Secs. (1) (part), (2).)

Sec. 111.0041. Records

(a) Any taxpayer who is required by this title to keep records shall keep those records open to inspection by the comptroller, the attorney general, or the authorized representatives of either of them for four years.

(b) This section prevails over any other conflicting provision of this title except Section 191.024(b) of this code. (Title 122A, Art. 1.031A.)

Sec. 111.0042. Sampling in Auditing; Projecting Assessments

(a) Pursuant to a written agreement with the taxpayer, or without an agreement in cases coming within the provisions of Subsection (b)(2) of this section, the comptroller or his designee may use sample and projection auditing methods for determining tax liability when he determines that the sampling and projection will provide the most reasonable means of determining any tax imposed by this title. Should the taxpayer not agree in writing to a sample and projection audit method as provided by this section, any audit performed on the taxpayer shall be a detailed audit. The comptroller may use sample audit methods in preliminary testing to determine if an error exists without the written approval of the taxpayer, but the sample may not be used as a basis for a tax liability without the written consent of the taxpayer.

(b) Sampling auditing methods are appropriate if:

(1) the taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical;

(2) the taxpayer's records are inadequate or insufficient, so that a competent audit for the period in question is not otherwise possible; or

(3) the cost of an audit of all detailed records to the taxpayer or to the state will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

(c) Before using a sample technique to establish a tax liability, the comptroller or his designee must notify the taxpayer in writing of the sampling procedure to be used.

(d) The sample must reflect as nearly as possible the normal conditions under which the business was operated during the period to which the audit applies. If a taxpayer can demonstrate that a transaction in a sample period is not representative of the taxpayer's business operations, the transaction shall be eliminated from the sample and be separately assessed in the audit. If records are inadequate to reflect accurately the business operations of the taxpayer, the comptroller or his designee shall determine the best information available and base his audit report on that information.

(e) If the taxpayer demonstrates that any sampling method used by the comptroller was not in accordance with generally recognized sampling techniques, the audit will be dismissed as to that portion of the audit established by projection based upon the sampling method, and a new audit may be performed. (Title 122A, Art. 1.036.)

Sec. 111.0043. General Audit and Prehearing Powers

(a) In this section:

(1) "Person" includes an individual, corporation, partner, partnership, officer, or director of a corporation, joint venture, trust, trustee, agent, or association.

(2) "Taxpayer" means the person whose tax obligation the comptroller is seeking to determine.

(b)(1) Before a determination of or a hearing on a taxpayer's tax obligation, if any, the comptroller may issue a subpoena addressed to the sheriff or constable of any county in this state to require any person who the comptroller determines may provide assistance in the examination of a taxpayer's tax obligation to appear at the place and time stated in the subpoena for the taking of his oral deposition before an official authorized to take depositions. The subpoena may require the person to produce at the time of the deposition books, documents, records, papers, accounts, and other objects as may be specified by the comptroller. The subpoena must include a statement setting out the reason why the requested material is needed.

(2) The deposition shall be taken in the county of the person's residence or in the county where the person is employed or regularly transacts business. The subpoena shall specify that the person shall remain in attendance from day to day until the deposition is begun and completed.

(3) The officer taking the oral deposition may not sustain objections to any of the testimony taken or exclude any of it.

(4) When the testimony is fully transcribed, the deposition shall be submitted to the person for examination and read to or by the person, unless the examination and reading are waived in writing by the person and by the comptroller. However, if the person is represented by an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that

the deposition is ready for examination and reading at the office of the deposition officer. If the person does not appear and examine, read, and sign the deposition within 10 days after the mailing of the notice, the deposition shall be returned and may be used as fully as though signed. The officer shall enter on the deposition any changes in form or substance that the person desires to make and a statement of the reasons given by the person for making them. The deposition shall then be signed by the person, unless the person and the comptroller by stipulation waive the signing or the person is ill, cannot be found, or refuses to sign. If the deposition is not signed by the person, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the person or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(5) The deposition shall be returned to the comptroller by the official taking the deposition either by mail or by delivering it in person.

(c) Before a determination of or a hearing on a taxpayer's tax obligation, if any, the comptroller may:

(1) issue a subpoena addressed to the sheriff or constable of any county in this state to require any person to produce at the place and time stated in the subpoena books, documents, records, papers, accounts, and other objects that the comptroller determines may assist in an examination of a person's tax obligation;

(2) issue an order to a person to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation on the property that may be material to any matter involved in the examination; the order must specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe any terms and conditions that are just;

(3) copy or conduct a complete examination of books, documents, records, papers, accounts, and other objects that are produced as a result of the subpoenas or orders specified in this section; and

(4) serve or have served by his designated agent any subpoena or order issued under this section by delivering a copy of the subpoena to the person.

(d) A person, other than the taxpayer, who is subpoenaed to give a deposition or to produce books, records, papers, or other objects under the authority of this section is entitled to receive after presentation of a voucher sworn by the person and approved by the comptroller:

(1) mileage of 20 cents a mile, or a greater amount as prescribed by agency rule, for going to and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of $20 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a deponent.

(e) If a person fails to comply with a subpoena or order issued under this section, the comptroller may:

(1) acting through the attorney general, bring suit to enforce the subpoena or order in a district court of Travis County; the court, if it determines that good cause exists for the issuance of a subpoena

or order, shall order the compliance with the requirements of the subpoena or order; failure to obey the order of the court may be punishable by the court as contempt;

(2) use records, books, papers, and other documents obtained or depositions taken under this section only in an administrative hearing of the comptroller or a judicial proceeding brought by or against the comptroller; the information may be made available to the federal government or to another state under an exchange agreement; and

(3) delegate his authority to issue subpoenas or orders and to participate in the taking of depositions as specified in this section to any attorney employed by him.

(f) If a foreign corporation doing business in this state has such contact with this state that it becomes subject to the taxes administered and collected by the comptroller and fails to appoint or maintain a registered agent in this state, or if the registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of the corporation and may be served with any subpoena or other order issued under this section in the manner provided for service of process in Article 8.10, Texas Business Corporation Act, as amended.

(g) Any person, including the taxpayer, shall be entitled to obtain upon request a copy of any statement he has previously made concerning the examination or its subject matter and which is in the possession, custody, or control of the comptroller. Copies of statements made to the comptroller by any person which are used as a basis for an assessment against a taxpayer may be obtained by the taxpayer upon request. If the request is refused, the person may move for an agency order under this subsection. For the purpose of this section, a statement previously made is:

(1) a written statement signed or otherwise adopted or approved by the person making it; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. (Title 122A, Art. 1.037.)

Sec. 111.0044. Special Procedures for Third-Party Orders and Subpoenas

(a)(1) If any order or subpoena described in Section 111.0043 of this code is served on any person who is a third-party recordkeeper, and the order or subpoena requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person ordered or subpoenaed) who is identified in the description of the record contained in the order or subpoena, then notice of the order or subpoena shall be given to any person so identified within three days of the day on which the service on the third-party recordkeeper is made but no later than the 14th day before the day fixed in the order or subpoena as the day upon which the records are to be examined. The notice shall be accompanied by a copy of the order or subpoena which has been served and shall contain directions for staying compliance with the order or subpoena under Subsection (b)(2) of this section.

(2) The notice shall be sufficient if, on or before the third day, the notice is delivered in hand to the person entitled to notice or is mailed by certified or registered mail to the last mailing address of

the person or, in the absence of a last known address, is left with the person ordered or subpoenaed. If the notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice.

(3) For purposes of this section, the term "third-party recordkeeper" means:

(A) a mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under federal or state law, a bank as defined in Section 581 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 581), or any credit union within the meaning of Section 501(c)(14)(A), Internal Revenue Code;

(B) any consumer reporting agency as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f));

(C) any person extending credit through the use of credit cards or similar devices; and

(D) any broker as defined in Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(4) Subsection (a)(1) of this section may not apply to an order or subpoena served on the person with respect to whose liability the order or subpoena is issued or an officer or employee of the person; or any order or subpoena to determine whether or not records of the business transactions or affairs of an identified person have been made or kept; or any order or subpoena described in Subsection (e) of this section.

(5) An order or subpoena to which this subsection applies shall identify the taxpayer to whom the order or subpoena relates and to whom the records pertain and shall provide other information to enable the person ordered or subpoenaed to locate the records required under the order or subpoena.

(b)(1) Notwithstanding any other law or rule of law, a person who is entitled to notice of an order or subpoena under Subsection (a) of this section shall have the right to intervene in any proceeding with respect to the enforcement of the order or subpoena under Subsection (e) of Section 111.0043 of this code.

(2) Notwithstanding any other law or rule of law, a person who is entitled to notice of an order or subpoena under Subsection (a) of this section shall have the right to stay compliance with the order or subpoena if, not later than the 14th day after the day the notice is given in the manner provided in Subsection (a)(2) of this section:

(A) notice in writing is given to the person ordered or subpoenaed not to comply with the order or subpoena;

(B) a copy of the notice not to comply with the order or subpoena is mailed by registered or certified mail to the person and to the office the comptroller directs in the notice referred to in Subsection (a)(1) of this section; and

(C) suit is filed against the comptroller in a district court of Travis County to stay compliance with the order or subpoena.

(c) No examination of any records required to be produced under an order or subpoena as to which notice is required under Subsection (a) of this section may be made:

(1) before the expiration of the 14-day period allowed for the notice not to comply under Subsection (b)(2) of this section; or

(2) when the requirements of Subsection (b)(2) of this section have been met, except in accordance with an order issued by a district court of Travis County authorizing examination of the records or with the consent of the person staying compliance.

(d) If any person takes any action as provided in Subsection (b) of this section and such person is the person with respect to whose liability the order or subpoena is issued under Section 111.0043 of this code (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under Subchapter D of this chapter with respect to the person shall be suspended for the period during which a proceeding and appeals of the proceeding with respect to the enforcement of such order are pending.

(e) Any order or subpoena issued under Section 111.0043 of this code that does not identify the person with respect to whose liability the order is issued may be served only after a court proceeding in which the comptroller establishes that:

(1) the order relates to the investigation of a particular person or ascertainable group or class of persons;

(2) there is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of state law; and

(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the order is issued) is not readily available from other sources.

(f) In the case of an order or subpoena issued under Section 111.0043 of this code, the provisions of Subsections (a)(1) and (b) of this section may not apply if, upon petition by the comptroller, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(g)(1) A district court of Travis County has jurisdiction to hear and determine proceedings brought under Subsection (e) or (f) of this section. The determinations required to be made under Subsections (e) and (f) of this section shall be ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order that may be appealed.

(2) Except for cases the court considers of greater importance, a proceeding brought for the enforcement of any order, or a proceeding under this section, and appeals, take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

(h) The comptroller shall by rule establish the rates and conditions for payments to reimburse reasonably necessary costs directly incurred by third-party recordkeepers in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by order or subpoena upon request of the comptroller. The reimbursement shall be in addition to mileage and fees paid under Subsections (d)(1) and (d)(2) of Section 111.0043 of this code. (Title 122A, Art. 1.038.)

Sec. 111.005. Governmental Entities to Cooperate

Each department, officer, and employee of the state or of a local governmental entity shall cooperate with and give reasonable assistance and information to the comptroller when performing authorized duties. (Title 122A, Art. 1.031, Sec. 1) (part).)

Sec. 111.006. Confidentiality of Information

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

(1) a federal tax return or federal tax return information required to have been submitted to the comptroller with a state tax return or report; and

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

(b) All information made confidential in this title may not be subject to subpoena directed to the comptroller or the attorney general except in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party.

(c) The comptroller or the attorney general may use information or records made confidential by provisions of this title to enforce any provisions of this title or may authorize their use in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party. (Title 122A, Art. 1.031, Secs. (3) and (4), Art. 1.035, Sec. (1).)

Sec. 111.007. Criminal Penalties for Disclosing Federal Tax Information

(a) The comptroller, a person who formerly held the office of comptroller, or an employee or former employee of the comptroller commits an offense if he discloses in a manner unauthorized by law a federal tax return or federal tax return information that is required to be submitted to the comptroller by any person.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000 or by confinement in jail for not more than one year, or by both a fine and confinement. (Title 122A, Art. 1.035, Sec. (2).)

Sec. 111.008. Deficiency Determination

(a) If the comptroller is not satisfied with a tax report or the amount of the tax required to be paid to the state by a person, the comptroller may compute and determine the amount of tax to be paid from information contained in the report or from any other information available to the comptroller.

(b) On making a determination under this section, the comptroller shall notify the person against whom a determination is made of the determination. The notice may be given by mail or by personal service.

(c) If the notice is given by mail, it shall be addressed to the taxpayer or other person at the taxpayer's address as it appears in the records of the comptroller. Service by mail is complete when the notice is deposited in a U.S. Post Office. (Title 122A, Art. 1.032, Secs. (A), (B).)

Sec. 111.009. Redetermination

(a) A person having a direct interest in a determination may petition the comptroller for a redetermination.

(b) A petition for redetermination must be filed before the expiration of 30 days after the date on which the service of the notice of determination is completed or the redetermination is barred. If a petition for redetermination is not filed before the expiration of the period provided by this subsection, the determination is final on the expiration of the period.

(c) If the petition requests a hearing on the redetermination, the person filing the petition is entitled to a hearing and to receive notice of the hearing at least 20 days before the day of the hearing.

(d) An order or decision of the comptroller on a petition for redetermination becomes final 15 days after service on the petitioner of the notice of the order or decision. (Title 122A, Art. 1.032, Secs. (C), (D).)

Sec. 111.010. Suit to Recover Taxes

(a) The attorney general shall bring suit in the name of the state to recover delinquent state taxes, tax penalties, and interest owed to the state.

(b) This section applies to state taxes imposed by this title or by other laws not included in this title but does not apply to the state ad valorem tax on property.

(c) Venue for and jurisdiction of a suit arising under this section is conferred upon the courts of Travis County. (Title 122A, Art. 1.04.)

Sec. 111.011. Injunction to Halt Business Activities

(a) If a person engaged in a business the operation of which involves the receipt, collection, or withholding of a tax imposed by this title fails to file a report or pay the tax as required by this title, the attorney general may bring suit for an injunction prohibiting the person from continuing in that business until the report is filed and the tax is paid.

(b) The venue for a suit under this section is in Travis County. (Title 122A, Art. 1.14, Secs. (a), (b).)

Sec. 111.012. Security for the Payment of Taxes

(a) If the comptroller finds that a tax imposed by this title is insecure, the comptroller may require a taxpayer who is delinquent in the payment of the tax to provide security for the payment of taxes.

(b) The security may consist of:

(1) a cash deposit filed with the comptroller;

(2) a surety bond; or

(3) other security as permitted by the comptroller.

(c) The amount and form of the security shall be set by the comptroller, except that the amount may not be more than double the amount of taxes that the comptroller estimates will be due from the taxpayer during the succeeding 12 months.

(d) The comptroller shall give notice to a taxpayer from whom security is required under this section.

(e) If a taxpayer does not furnish security to the comptroller as required by the comptroller before the expiration of 10 days following the day on which notice is given, the comptroller may bring suit for an order enjoining the taxpayer from engaging in business until the security is furnished. Venue for a suit under this section is in Travis County. (Title 122A, Art. 1.14, Sec. (c).)

Sec. 111.013. Evidence: Occupation Tax Claims

In a suit involving the establishment or collection of an occupation tax, a claim showing the amount of tax due the state and certified by the comptroller or the chief clerk of the comptroller is admissible as evidence. When admitted, the claim is prima facie evidence of its contents. (Title 122A, Art. 1.08; Acts 47th Legis., Reg. Sess., Ch. 631, Sec. 4.)

Sec. 111.014. Evidence: Copies of Graphic Matter

(a) A copy of graphic matter is admissible, without further proof, in a judicial or administrative proceeding concerning the administration or enforcement of a tax imposed by this title if:

(1) the copy or information contained in the copy is relevant;

(2) the copy is a reproduction made by a photographic, photostatic, magnetic, or other process that accurately duplicates or forms a durable medium for accurately reproducing the original matter or information contained in the original matter; and

(3) the graphic matter was kept or recorded by the comptroller in the performance of official functions.

(b) "Graphic matter" means a memorandum, entry, report, or other document, a record of information contained in a memorandum, entry, report, or other document, or a record of an action taken by the comptroller.

(c) The admissibility of a copy of graphic matter as allowed under this section does not affect the admissibility of the original matter or other competent evidence offered to show the incorrectness of the copy or of information reflected in the copy. (Title 122A, Art. 1.15.)

Sec. 111.015. Remedies Cumulative

The rights, powers, remedies, liens, and penalties provided by this title are cumulative of other rights, powers, remedies, liens, and penalties for the collection of taxes provided by this title and by other law. (Title 122A, Art. 1.07, Secs. (1)(d), (3) (part); Art. 1.11A, Sec. (13).)

Sec. 111.016. Payment to the State of Tax Collections

Any person who receives or collects a tax or any money represented to be a tax from another person is liable to the state for the full amount of the taxes plus any accrued penalties and interest on the taxes. (Title 122A, Art. 1.07(2) (part).)

[Sections 111.017–111.050 reserved for expansion]

SUBCHAPTER B. TAX REPORTS AND PAYMENTS

Sec. 111.051. Reports and Payments; Due Dates

(a) The comptroller may set the date for filing a report for and making a payment of a tax imposed by this title.

(b) A date set by the comptroller under this section prevails over a different date prescribed by this title for the filing of a report for or the payment of a tax, except that the comptroller may not set a report or payment date for the state sales and use tax that conflicts with the dates prescribed by Chapter 151 of this code. (Title 122A, Art. 1.034.)

Sec. 111.052. Form of Report

(a) The comptroller may revise the form of a report required under this title to eliminate specific information that may be required by any other provision of this title.

(b) Information that is no longer required because of a revision under Subsection (a) of this section may be required again at any time by the comptroller. (Title 122A, Art. 1.033.)

Sec. 111.053. Filing Dates: Weekends and Holidays

If the date on which a report or payment is due falls on a Saturday, Sunday, or legal holiday, the next day that is not a Saturday, Sunday, or legal holiday becomes the due date. (Title 122A, Art. 1.13, Sec. (e).)

Sec. 111.054. Timely Filing: Mail Delivery

(a) If a tax payment or a report is placed in a U.S. Post Office or in the hands of a common or contract carrier properly addressed to the comptroller on or before the date the payment or report is required to be made or filed, the payment or report is made or filed on time.

(b) The receipt mark of a contract or common carrier or the postmark on a tax payment or report is prima facie evidence of the date on which the payment or report was delivered to a carrier or the post office. The comptroller or the person making the payment or filing the report may show by competent evidence that the actual date of delivery to the carrier or post office differs from the receipt mark or postmark.

(c) The comptroller may refund or issue credits for penalties and interest paid solely as a result of returns or tax payments timely mailed but postmarked after the required filing date. (Title 122A, Art. 1.13, Secs. (a), (b), (g).)

Sec. 111.055. Timely Filing: Diligence

A person who files a report or makes a tax payment complies with the filing requirements for timeliness if the person exercises reasonable diligence to comply and through no fault of the person the report is not filed or the payment is not made on time. (Title 122A, Art. 1.13, Sec. (c).)

Sec. 111.056. Filing Within 10 Days: Penalty and Interest

If a report is filed or a tax payment is made before the expiration of 10 days after the date on which the report or payment is due and if the report as originally filed shows the correct amount of the tax due or the amount of the payment is for the correct amount due, no assessment for penalty or interest may be made solely on the grounds of late filing after the expiration of 90 days after the date the report was required to be filed or the payment required to be made. (Title 122A, Art. 1.13, Sec. (d).)

Sec. 111.057. Extension for Filing Report

(a) The comptroller may grant a reasonable extension of time, not to exceed 45 days, for the filing of a report required by this title.

(b) To qualify for an extension of time under this section, the person required to file a report must make a request for the extension to the comptroller and remit not less than 90 percent of the amount of the tax estimated to be due on or before the filing date as required by other provisions of this title. The request must be in writing and include the reason an extension is needed. (Title 122A, Art. 1.13, Sec. (h).)

Sec. 111.058. Filing Extension Because of Natural Disaster

(a) The comptroller may grant to a person whom the comptroller finds to be a victim of a natural disaster an extension of not more than 90 days to make or file a return or pay a tax imposed by this title.

(b) The person owing the tax may file a request for an extension at any time before the expiration of 90 days after the original due date.

(c) If an extension under this section is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and tax penalties are assessed and determined as though the last day of the extension were the original due date. (Title 122A, Art. 1.13, Sec. (i).)

Sec. 111.059. Oath Not Required

A report, return, declaration, claim for refund, or other document required or permitted to be filed with the comptroller is not required to be made or submitted under oath, verification, acknowledgment, or affirmation. (Title 122A, Art. 1.12 (part).)

Sec. 111.060. Interest on Delinquent Tax

(a) The yearly interest rate on all delinquent taxes imposed by this title is 10 percent, except that no interest accrues on the taxes imposed by Chapter 154 of this code. This subsection does not apply to the taxes imposed by Chapter 152 of this code except as provided by Section 152.045(a) of this code.

(b) Except as provided by Subsection (c) of this section, delinquent taxes draw interest beginning 60 days from the date due.

(c) Subsection (b) of this section does not apply to the taxes imposed by Chapters 152, 153, and 211 of this code. (Title 122A, Art. 3.03, Sec. (4) (part); Art. 4.03, Sec. (10) (part); Art. 4.06 (part); Art. 5.03, Sec. (1) (part); Art. 6.06, Sec. (1) (part); Art. 9.012 (part); Art. 11.11 (part); Art. 12.14, Sec. (1) (part); Art. 14.17 (part); Art. 18.03 (part); Art. 19.02, Sec. (5) (part); Art. 20.05, Sec. (H) (part); Art. 20.08, Sec. (G) (part); Art. 23.07 (part).)

[Sections 111.061–111.100 reserved for expansion]

SUBCHAPTER C. SETTLEMENTS, REFUNDS, AND CREDITS

Sec. 111.101. Settlement Before Redetermination

(a) After the comptroller examines a taxpayer's records and before a petition for redetermination of the tax is filed, the comptroller may settle a claim for a tax, penalty, or interest imposed by this title if the cost of collection of the amount due would exceed the amount of tax due and if the amount due is not more than $300.

(b) A settlement under this section is not effective unless it is approved by the assistant comptroller for legal services. (Title 122A, Art. 1.032A, Sec. (b).)

Sec. 111.102. Settlement on Redetermination

As a part of a redetermination order, the comptroller may settle a claim for a tax, penalty, or interest imposed by this title if:

(1) the cost of collection of the amount of tax due would exceed the amount of tax due and the amount of tax due is not more than $1,000;

(2) collection of the amount of tax due would make the taxpayer insolvent and the taxpayer has submitted to the comptroller all financial records, including income tax reports and an inventory of all property owned wherever located; or

(3) the taxpayer is insolvent, is in liquidation, or has ceased to do business and:

(A) the taxpayer has no property that may be seized by the courts of this or another state; or

(B) the value of the taxpayer's property is less than the amount of tax due and the amount of debts against the property. (Title 122A, Art. 1.032A, Sec. (a).)

Sec. 111.103. Settlement of Penalty and Interest Only

(a) The comptroller may settle a claim for a tax penalty or interest on a tax imposed by this title if the taxpayer exercised reasonable diligence to comply with the provisions of this title.

(b) A settlement under this section is not effective unless it is approved by the assistant comptroller for legal services. (Title 122A, Art. 1.032A, Sec. (c).)

Sec. 111.104. Refunds

(a) If the comptroller finds that an amount of tax, penalty, or interest has been unlawfully or erroneously collected, the comptroller shall credit the amount against any other amount when due and payable by the taxpayer from whom the amount was collected. The remainder of the amount, if any, may be refunded to the taxpayer from money appropriated for tax refund purposes.

(b) A tax refund claim may be filed with the comptroller by the person who paid the tax or by the person's attorney, assignee, or other successor.

(c) A claim for a refund must:

(1) be written;

(2) state the grounds on which the claim is founded; and

(3) be filed before the expiration of the applicable limitation period as provided by this code or before the expiration of six months after a jeopardy or deficiency determination becomes final, whichever period expires later.

(d) A refund claim for an amount of tax that has been found due in a jeopardy or deficiency determination is limited to the amount of tax, penalty, and interest and to the tax payment period for which the determination was issued. The failure to file a timely tax refund claim is a waiver of any demand against the state for an alleged overpayment.

(e) This section applies to all taxes and license fees collected or administered by the comptroller, except the state property tax.

(f) No taxes, penalties, or interest may be refunded to a person who has collected the taxes from another person unless the person has refunded all the taxes and interest to the person from whom the taxes were collected. (Title 122A, Art. 1.11A, Secs. (1), (2), (3), (4) (part), (12).)

Sec. 111.105. Tax Refund: Hearing

(a) A person claiming a refund under Section 111.104 of this code is entitled to an oral hearing on the claim if the person requests a hearing. The person is entitled to 20 days' notice of the time and place of the hearing.

(b) A decision of the comptroller on a claim for a refund becomes final 15 days after it is issued.

(c) A tax refund claimant who is dissatisfied with the decision on the claim is entitled to file a motion for rehearing.

(d) A motion for rehearing on a tax refund claim must be written and assert each specific ground of error. (Title 122A, Art. 1.11A, Secs. (4) (part), (6) (part).)

Sec. 111.106. Interest on Refund or Credit

In a comptroller's final decision on a claim for refund or in an audit, interest shall be allowed at the rate of 10 percent a year on the amount

found to be erroneously paid from 60 days after the date of payment or the due date of the tax report, whichever is later, to the date of allowance of credit on account of the comptroller's final decision or audit or to a date within 10 days prior to the date of the refund warrant, the date to be determined by the comptroller; except that a credit taken by a taxpayer on his return does not accrue interest. (Title 122A, Art. 1.11A, Sec. (11).)

Sec. 111.107. When Refund or Credit is Permitted

A person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 of this code and the refund is made or the credit is issued under a court order;

(2) under Article 111.104 of this code; or

(3) under Chapter 153 of this code. (Title 122A, Art. 1.045, Sec. (G).)

Sec. 111.108. Recovery of Refund or Credit

The comptroller may recover an amount of refund erroneously paid or an amount of credit erroneously allowed in a jeopardy or deficiency determination issued within four years after the date of refund or credit. (Title 122A, Art. 1.11A, Sec. (15).)

[Sections 111.109–111.200 reserved for expansion]

SUBCHAPTER D. LIMITATIONS

Sec. 111.201. Assessment Limitation

No tax imposed by this title may be assessed after four years from the date that the tax becomes due and payable. (Title 122A, Art. 1.045, Sec. (A).)

Sec. 111.202. Suit Limitation

At any time within three years after a deficiency or jeopardy determination has become due and payable or within three years after the last recording of a lien, the comptroller may bring an action in the courts of this state, or any other state, or of the United States in the name of the people of the State of Texas to collect the amount delinquent together with penalties and interest. (Title 122A, Art. 1.045, Sec. (B).)

Sec. 111.203. Agreements to Extend Period of Limitation

(a) Before the expiration of the periods prescribed in Sections 111.-201 and 111.202 of this code for the assessment and collection of any tax imposed by this title, the comptroller and a taxpayer may agree in writing to an assessment and collection after that time. The agreement must contain the reasons the comptroller and the taxpayer wish to extend the period. At any time before the expiration of the period agreed on, the tax may be assessed and collected or an action may be commenced in any court to collect the amount delinquent.

(b) The extended period agreed on under Subsection (a) of this section may be extended by subsequent agreements made before the expiration of the extended period. All subsequent agreements must set forth the reasons for extending the period.

(c) No single extension agreement may be for a period of more than 24 months from the expiration date of the period being extended.

(d) The period for assessment and collection of a tax may be extended if:

(1) without an extension, there might occur a revenue loss to the state;

(2) either the taxpayer or the comptroller, despite good faith efforts, requires more time to prepare for or complete the audit;

(3) without an extension, circumstances beyond the control of either the comptroller or the taxpayer would make an audit by the comptroller impractical or burdensome for either party; or

(4) an issue of law involved in the audit is awaiting determination in either litigation or an administrative proceeding. (Title 122A, Art. 1.045, Sec. (C).)

Sec. 111.204. Beginning of Period of Limitation

In determining the beginning date for a period of limitation provided in this title, the date that a tax is due and payable is the day after the last day on which a payment is required by the chapter of this title imposing the tax. (Title 122A, Art. 1.045, Sec. (D).)

Sec. 111.205. Exception to Assessment Limitation

The limitation provided by Section 111.201 of this code does not apply and the comptroller may assess a tax imposed by this title at any time if:

(1) with intent to evade the tax, the taxpayer files a false or fraudulent report;

(2) no report for the tax has been filed; or

(3) information contained in the report of the tax contains a gross error and the amount of tax due and payable after correction of the error is 25 percent or more greater than the amount initially reported. (Title 122A, Art. 1.045, Sec. (A) (part).)

Sec. 111.206. Exception to Limitation: Determination Resulting From Administrative Proceeding

(a) This section applies only to a final determination resulting from:

(1) an administrative proceeding of a local, state, or federal regulatory agency; or

(2) a judicial proceeding arising from an administrative proceeding of a local, state, or federal regulatory agency.

(b) A final determination that affects the amount of liability of a tax imposed by this title shall be reported to the comptroller before the expiration of 60 days after the day on which the determination becomes final. The report must include a detailed statement of the reasons for the difference in tax liability as required by the comptroller.

(c) Notwithstanding the expiration of a period of limitation provided in this title, the comptroller may assess and collect or bring suit for the collection of any tax deficiency, including penalties and interest, resulting from a final determination or from investigation at any time before the expiration of one year after:

(1) the day the report required by Subsection (b) of this section is received, if the report is filed within the 60-day period; or

(2) if the report is not made or is made after the 60-day period, the day the report is received or the day the final determination is discovered, whichever period is the shorter.

(d) If a final determination or investigation results in the taxpayer having overpaid the amount of tax due the state, the comptroller shall refund or issue a credit for the amount of the overpayment at any time

during the one-year period during which assessments may be made under Subsection (c) of this section.

(e) This section does not shorten any period of limitation elsewhere provided in this title. (Title 122A, Art. 1.045, Sec. (F).)

Sec. 111.207. Tolling of Limitation Period

(a) In determining the expiration date for a period when a tax imposed by this title may be assessed or collected, the following periods are not considered:

(1) the period following the date of a tax payment made under protest;

(2) the period during which a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of the tax due; and

(3) the period during which an administrative proceeding is pending before the comptroller for a redetermination of the tax liability.

(b) The suspension of a period of limitation under Subsection (a) of this section applies only to the amount of taxes in issue under Subdivision (1), (2), or (3) of that subsection.

(c) A bankruptcy case commenced under Title 11 of the United States Code suspends the running of the period prescribed by any section of this title for the assessment or collection of any tax imposed by this title until the bankruptcy case is dismissed or closed. After the case is dismissed or closed, the running of the period resumes until finally expired. (Title 122A, Art. 1.045, Sec. (E).)

[Sections 111.208–111.250 reserved for expansion]

SUBCHAPTER E. ASSIGNMENT OF TAX CLAIMS

Sec. 111.251. Assignment on Payment by Third Person

(a) A person may voluntarily pay to the comptroller the tax, fine, penalty, and interest due for a period of time under this title by another person after the tax becomes due or may pay a judgment for those taxes, and when the tax or judgment is paid, the comptroller may assign all rights, liens, judgments, and remedies of the state to secure and enforce tax payments to the person paying the tax or the judgment.

(b) A person paying a tax or judgment for another under Subsection (a) of this section is subrogated to and succeeds to all rights, liens, judgments, and remedies of the state relating to the enforcement of the taxes paid. (Title 122A, Art. 1.07, Sec. (h)(i) (part).)

Sec. 111.252. Notice to Taxpayer

(a) No assignment under Section 111.251 of this code may be made until after the expiration of 30 days after notice of the assignments is given to the taxpayer from whom the tax is due or against whom the judgment is taken.

(b) Notice of the assignment must be sent by certified mail to the taxpayer at his last known address as shown in the comptroller's records. (Title 122A, Art. 1.07, Sec. (h)(i) (part).)

Sec. 111.253. Venue for Enforcement of Assigned Claims

Venue for the enforcement of an assigned tax claim or judgment under this subchapter by the assignee is governed by the general law establishing venue and not by the special venue provisions of this title. (Title 122A, Art. 1.07, Sec. (h)(ii).)

Sec. 111.254. Reassignment

(a) The rights, liens, judgments, and remedies assigned under Section 111.251 of this code may be reassigned by any assignee.

(b) If notice is given as required by Section 111.252 of this code, all rights, liens, judgments, and remedies originally held by the state to enforce and secure the tax claim or judgment pass to each person receiving a reassignment unless the reassignment is expressly limited in writing. (Title 122A, Art. 1.07, Sec. (h)(iii).)

Sec. 111.255. Recording of Assignment

The assignee of a tax claim or judgment under this subchapter may record the assignment in the state tax lien record book in the office of the county clerk. A recorded assignment shall be indexed to show the names of the assignor and assignee and the date of the assignment. (Title 122A, Art. 1.07, Sec. (h)(v).)

CHAPTER 112. TAXPAYERS' SUITS

SUBCHAPTER A. JURISDICTION

Section

112.001. Taxpayers' Suits: Jurisdiction

[Sections 112.002–112.050 reserved for expansion]

SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT

112.051. Protest Payment Required
112.052. Taxpayer Suit After Payment Under Protest
112.053. Taxpayer Suit: Parties; Issues
112.054. Trial De Novo
112.055. Class Actions
112.056. Additional Protest Payments Before Hearing
112.057. Protest Payments During Appeal
112.058. Submission of Protest Payments to Treasurer
112.059. Disposition of Protest Payments Belonging to the State
112.060. Refund

[Sections 112.061–112.100 reserved for expansion]

SUBCHAPTER C. INJUNCTIONS

112.101. Requirements Before Injunction
112.102. Records After Injunction
112.103. Reports After Injunction
112.104. Additional Payments or Bond
112.105. Dismissal of Injunction
112.106. Final Dismissal or Dissolution of Injunction
112.107. Refund

[Sections 112.108–112.150 reserved for expansion]

SUBCHAPTER D. SUIT FOR TAX REFUND

112.151. Suit for Refund
112.152. Issues in Suit
112.153. Attorney General to Represent Comptroller
112.154. Trial De Novo
112.155. Judgment
112.156. Res Judicata

CHAPTER 112. TAXPAYERS' SUITS

SUBCHAPTER A. JURISDICTION

Sec. 112.001. Taxpayers' Suits: Jurisdiction

The courts of Travis County have exclusive, original jurisdiction of a taxpayer suit brought under this chapter. (Title 122A, Art. 1.05, Sec. (2) (part), Art. 1.06, Sec. (6); V.A.C.S. Art. 7057b, Sec. 2 (part).)

[Sections 112.002–112.050 reserved for expansion]

SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT

Sec. 112.051. Protest Payment Required

(a) If a person who is required to pay to any department of the state government an occupation, gross receipts, franchise, license, or other privilege tax or fee contends that the tax or fee is unlawful or that the department may not legally demand or collect the tax or fee, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

(b) The protest must be in writing and must state fully and in detail each reason for recovering the payment. (Title 122A, Art. 1.05, Sec. (1); V.A.C.S. Art. 7057b, Sec. 1.)

Sec. 112.052. Taxpayer Suit After Payment Under Protest

(a) A person may bring suit against the state to recover an occupation, gross receipts, franchise, license, or privilege tax or fee required to be paid to the state if the person has first paid the tax under protest as required by Section 112.051 of this code.

(b) A suit under this section must be brought within 90 days after the day the protest payment was made, or the suit is barred. (Title 122A, Art. 1.05, Sec. (2) (part); V.A.C.S. Art. 7057b, Sec. 2 (part).)

Sec. 112.053. Taxpayer Suit: Parties; Issues

(a) A suit authorized by this subchapter must be brought against the public official charged with the duty of collecting the tax or fee, the treasurer, and the attorney general.

(b) The issues to be determined in the suit are limited to those arising from the reasons expressed in the written protest as originally filed. (Title 122A, Art. 1.05, Sec. (2) (part); V.A.C.S. Art. 7057b, Sec. 2 (part).)

Sec. 112.054. Trial De Novo

The trial of the issues in a suit under this subchapter is de novo. (Title 122A, Art. 1.05, Sec. (2) (part); V.A.C.S. Art. 7057b, Sec. 2 (part).)

Sec. 112.055. Class Actions

(a) In this section, a class action includes a suit brought under this subchapter by at least two persons who have paid taxes under protest as required by Section 112.051 of this code.

(b) In a class action, all taxpayers who are within the same class as the persons bringing the suit, who are represented in the class action, and who have paid taxes under protest as required by Section 112.051 of this code, are not required to file separate suits, but are entitled to and are governed by the decision rendered in the class action. (Title 122A, Art. 1.05, Sec. (2) (part); V.A.C.S. Art. 7057b, Sec. 2 (part).)

Sec. 112.056. Additional Protest Payments Before Hearing

(a) A petitioner shall pay additional taxes when due under protest after the filing of a suit authorized by this subchapter and before the trial. The petitioner shall amend the original petition to include all additional taxes paid under protest before five days before the day the suit is set for a hearing.

(b) If a petitioner pays additional taxes under protest after the filing of a suit authorized by this subchapter and before the trial and if the total of the original payment and additional payments exceeds the jurisdictional limitations of the court in which the suit was originally filed, the petitioner may file suit in the proper court of Travis County at any time before the expiration of 90 days following the day the additional taxes that caused the excess in the jurisdictional amount were paid. The court in which a suit is refiled as authorized by this subsection may dispose of those taxes paid under protest more than 90 days before the refiling if those taxes were included in the original suit.

(c) This section applies to additional taxes paid under protest only if a written protest is filed with the additional taxes and the protest states the same reason for contending the payment of taxes that was stated in the original protest. (Title 122A, Art. 1.05, Sec. (3) (part); V.A.C.S. Art. 7057b, Sec. 2a (part).)

Sec. 112.057. Protest Payments During Appeal

(a) If a person appeals the judgment of a trial court in a suit authorized by this subchapter, the person shall continue to pay additional taxes under protest as the taxes become due during the appeal.

(b) Additional taxes that are paid under protest during the appeal of the suit shall be governed by the outcome of the suit without the necessity of the person filing an additional suit for the additional taxes. (Title 122A, Art. 1.05, Secs. (3) (part), (2) (part); V.A.C.S. Art. 7057b, Secs. 2a (part), 2 (part).)

Sec. 112.058. Submission of Protest Payments to Treasurer

(a) An officer who receives payments made under protest as required by Section 112.051 of this code shall each day send to the treasurer the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(b) The comptroller shall issue a deposit receipt to each state department for the daily total of payments received from each department.

(c) The treasurer shall make and keep a suspense cash book in which deposit receipts are entered.

(d) The treasurer shall, immediately on receipt, place the payments in state depositories bearing interest in the same manner that other funds are required to be placed in state depositories at interest.

(e) The treasurer shall allocate the interest earned on these funds and credit the amount allocated to the suspense account until the status of the funds is finally determined. (Title 122A, Art. 1.05, Sec. (4); V.A.C.S. Art. 7057b, Sec. 3.)

Sec. 112.059. Disposition of Protest Payments Belonging to the State

(a) If a suit authorized by this subchapter is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that a tax payment or a portion of a tax payment made under protest, including the pro rata amount of interest earned on the payment, belongs to the state, the treasurer shall transfer the proper

amount from the suspense account to the appropriate state fund by the issuance of a deposit warrant.

(b) Each warrant issued under this section shall be entered in the suspense cash book and the appropriate fund to which the transfer is made shall be properly credited with the correct amount. (Title 122A, Art. 1.05, Sec. (5) (part); V.A.C.S. Art. 7057b, Sec. 4 (part).)

Sec. 112.060. Refund

(a) If a suit under this subchapter results in a final determination that all or part of the money paid under protest was unlawfully demanded by the public official and belongs to the taxpayer, the treasurer shall refund the proper amount, with the pro rata interest earned on that amount, by the issuance of a refund warrant.

(b) A refund warrant shall be styled and designated "tax refund warrant," written and signed by the comptroller, countersigned by the treasurer, and issued from a separate series used only for the purpose of making refunds.

(c) Each tax refund warrant shall be drawn against the suspense account.

(d) The treasurer shall return to the comptroller each tax refund warrant issued, and the comptroller shall deliver it to the person entitled to receive it. (Title 122A, Art. 1.05, Sec. (5) (part); V.A.C.S. Art. 7057b, Sec. 4 (part).)

[Sections 112.061–112.100 reserved for expansion]

SUBCHAPTER C. INJUNCTIONS

Sec. 112.101. Requirements Before Injunction

(a) No restraining order or injunction that prohibits the collection of a state tax; license, registration, or filing fee; or statutory penalty assessed for the failure to pay the state tax or fee may be granted in this state or may be granted against a state official or a representative of an official in this state unless the applicant for the order or injunction has first:

(1) paid into the suspense account of the treasurer all taxes, fees, and penalties then due by the applicant to the state; or

(2) filed with the treasurer a good and sufficient bond to guarantee the payment of the taxes, fees, and penalties in an amount equal to twice the amount of the taxes, fees, and penalties then due and that may reasonably be expected to become due during the period the order or injunction is in effect.

(b) The amount of the bond and the sureties on the bond authorized by Subsection (a)(2) of this section must be approved by and acceptable to the judge of the court granting the order or injunction and the attorney general.

(c) The application for the restraining order or injunction must state under the oath of the applicant or the agent or attorney of the applicant that:

(1) the payment of taxes, fees, and penalties has been made as provided by Subsection (a)(1) of this section; or

(2) a bond has been approved and filed as provided by Subsection (a)(2) and Subsection (b) of this section. (Title 122A, Art. 1.06, Secs. (1), (2) (part).)

Sec. 112.102. Records After Injunction

(a) After the granting of a restraining order or injunction under this subchapter, the applicant shall make and keep a well-bound record book of all taxes accruing during the period that the order or injunction is effective.

(b) The record book is open for inspection by the attorney general and the state officer authorized to enforce the collection of the tax to which the order or injunction applies during the period that the order or injunction is effective and for one year after the date that the order or injunction expires.

(c) The record book must include a record of each purchase, receipt, sale, or other disposition of a commodity, product, material, or article on which the tax is levied or by which the tax is measured. (Title 122A, Art. 1.06, Sec. (3).)

Sec. 112.103. Reports After Injunction

(a) On each Monday during the period that an order or injunction granted under this subchapter is effective, the applicant shall make and file a report with the state officer authorized to enforce the collection of the tax to which the order or injunction applies.

(b) The report must include the following weekly information:

(1) the amount of the tax accruing;

(2) a description of the total purchases, receipts, sales, and other dispositions of all commodities, products, materials, and articles on which the tax is levied or by which the tax is measured;

(3) the name and address of each person to whom a commodity, product, material, or article is sold or distributed; and

(4) if payment of the tax is evidenced or measured by the sale or use of stamps or tickets, a complete record of all stamps or tickets used, sold, or handled.

(c) The report shall be made on a form prescribed by the state official with whom the report is required to be filed. (Title 122A, Art. 1.06, Sec. (4).)

Sec. 112.104. Additional Payments or Bond

(a) If an applicant for an order or injunction granted under this subchapter has not filed a bond as required by Section 112.101(a)(2) of this code, the applicant shall on each Monday pay into the suspense account of the treasurer all taxes, fees, and penalties to which the order or injunction applies as those taxes, fees, and penalties accrue and before they become delinquent.

(b) If the attorney general determines that the amount of a bond filed under this subchapter is insufficient to cover double the amount of taxes, fees, and penalties accruing after the restraining order or injunction is granted, the attorney general shall demand that the applicant file an additional bond. (Title 122A, Art. 1.06, Secs. 5 (part), 2 (part).)

Sec. 112.105. Dismissal of Injunction

(a) The attorney general or the state official authorized to enforce the collection of a tax to which an order or injunction under this subchapter applies may file in the court that has granted the order or injunction an affidavit stating that the applicant has failed to comply with or has violated a provision of this subchapter.

(b) On the filing of an affidavit authorized by Subsection (a) of this section, the clerk of the court shall give notice to the applicant to appear before the court to show cause why the order or injunction should not be

dismissed. The notice shall be served by the sheriff of the county where the applicant resides or by any other peace officer in the state.

(c) The date of the show-cause hearing, which shall be within five days of service of the notice or as soon as the court can hear it, shall be named in the notice.

(d) If the court finds that the applicant failed, at any time before the suit is finally disposed of by the court of last resort, to make and keep a record, file a report, file an additional bond on the demand of the attorney general, or pay additional taxes, fees, and penalties as required by this subchapter, the court shall dismiss the application and dissolve the order or injunction. (Title 122A, Art. 1.06, Secs. (7), (5) (part).)

Sec. 112.106. Final Dismissal or Dissolution of Injunction

(a) If a restraining order or injunction is finally dismissed or dissolved, the treasurer shall:

(1) if a bond was filed, make demand on the applicant and the applicant's sureties for the immediate payment of all taxes, fees, and penalties due the state; or

(2) if no bond was filed, transfer the amount of taxes, fees, and penalties from the suspense account to the proper fund to which the taxes, fees, and penalties are allocated.

(b) Taxes, fees, and penalties that are secured by a bond and remain unpaid after a demand for payment shall be recovered in a suit by the attorney general against the applicant and the applicant's sureties in a court of competent jurisdiction of Travis County or in any other court having jurisdiction of the suit. (Title 122A, Art. 1.06, Secs. (8), (9).)

Sec. 112.107. Refund

If the final judgment in a suit under this subchapter maintains the right of the applicant for a permanent injunction to prevent the collection of the tax, the treasurer shall refund to the applicant the money deposited in the suspense account under this subchapter with the pro rata interest earned on the money. (Title 122A, Art. 1.06, Sec. (10).)

[Sections 112.108–112.150 reserved for expansion]

SUBCHAPTER D. SUIT FOR TAX REFUND

Sec. 112.151. Suit for Refund

(a) A person may sue the comptroller to recover an amount of tax, penalty, or interest that has been the subject of a tax refund claim if the person has:

(1) filed a tax refund claim under Section 111.104 of this code;

(2) filed, as provided by Section 111.105 of this code, a motion for rehearing that has been denied by the comptroller; and

(3) paid any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

(b) The suit must be filed in a district court.

(c) The suit must be filed before the expiration of 30 days after the issue date of the denial of the motion for rehearing or it is barred. (Title 122A, Art. 1.11A, Secs. (6) (part), (7).)

Sec. 112.152. Issues in Suit

(a) The grounds of error contained in the motion for rehearing are the only issues that may be raised in a suit under this subchapter.

(b) The suit applies only to a tax liability period considered in the comptroller's decision. (Title 122A, Art. 1.11A, Secs. (6) (part), (8) (part).)

Sec. 112.153. Attorney General to Represent Comptroller

The attorney general shall represent the comptroller in a suit under this subchapter. (Title 122A, Art. 1.11A, Sec. (6) (part).)

Sec. 112.154. Trial De Novo

In a suit under this subchapter, the issues shall be tried de novo as are other civil cases. (Title 122A, Art. 1.11A, Sec. (8) (part).)

Sec. 112.155. Judgment

(a) The amount of a judgment for the plaintiff shall be credited against any tax, penalty, or interest imposed by this title or by Section 81.111, Natural Resources Code, and due from the plaintiff.

(b) The remainder of the amount of a judgment not credited to a tax, penalty, or interest due shall be refunded to the plaintiff.

(c) The plaintiff is entitled to interest at the rate of 10 percent a year on the amount of a judgment for the plaintiff beginning from the date that the tax was paid until:

(1) the date that the amount is credited against the plaintiff's tax liability; or

(2) a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued. (Title 122A, Art. 1.11A, Secs. (9), (10).)

Sec. 112.156. Res Judicata

The rule of res judicata applies in a suit under this subchapter only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties. (Title 122A, Art. 1.11A, Sec. (14).)

CHAPTER 113. TAX LIENS

SUBCHAPTER A. FILING AND RELEASE OF STATE TAX LIENS

Section

113.001. Tax Liability Secured by Lien
113.002. Tax Lien Notice
113.003. Execution of Documents
113.004. State Tax Lien Book
113.005. Duties of County Clerk
113.006. Effect of Filing Tax Lien Notice
113.007. Evidence of Tax Payment
113.008. Release of Lien on Specific Property
113.009. Filing of Tax Lien Release
113.010. Release of Lien by Assignee
113.011. Liens Filed With Highway Department

[Sections 113.012–113.100 reserved for expansion]

SUBCHAPTER B. APPLICATION AND STATUS OF STATE TAX LIENS

Section
113.101. Applicability of Lien Before Filing
113.102. Applicability of Lien to Merchandise Purchased
113.103. Applicability of Lien to Financial Institutions
113.104. Preferential Transfers
113.105. Tax Lien; Period of Validity
113.106. Lien; Suit to Determine Validity
113.107. Assignment of Judgment on Lien

[Sections 113.108–113.200 reserved for expansion]

SUBCHAPTER C. UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

113.201. Place of Filing
113.202. Certification
113.203. Duties of Filing Officer
113.204. Fees
113.205. Purpose
113.206. Short Title

CHAPTER 113. TAX LIENS

SUBCHAPTER A. FILING AND RELEASE OF STATE TAX LIENS

Sec. 113.001. Tax Liability Secured by Lien

(a) All taxes, fines, interest, and penalties due by a person to the state under this title are secured by a lien on all of the person's property that is subject to execution and is owned at the time the lien attaches.

(b) The lien for taxes attaches to all of the property of a person liable for the taxes on the day the tax becomes due and payable. (Title 122A, Art. 1.07, Sec. (1)(b).)

Sec. 113.002. Tax Lien Notice

(a) The comptroller shall issue and file a tax lien notice required by this chapter.

(b) A tax lien notice must include the following information:

(1) the name and address of the taxpayer;

(2) the type of tax that is owing;

(3) each period for which the tax is claimed to be delinquent; and

(4) the amount of tax only due for each period, excluding the amount of any penalty, interest, or other charge.

(c) A tax lien notice may include other relevant information that the comptroller considers proper. (Title 122A, Art. 1.07, Sec. (1)(e)(i) (part).)

Sec. 113.003. Execution of Documents

The comptroller may execute, certify, authenticate, or sign any instrument authorized under this chapter to be issued by the comptroller or under the comptroller's authority with a facsimile signature and seal. (Title 122A, Art. 1.07, Sec. (1)(e)(ii).)

Sec. 113.004. State Tax Lien Book

The county clerk of each county shall provide at the expense of the county a well-bound book, entitled "State Tax Liens," in which notices of state tax liens filed by the comptroller are recorded. (Title 122A, Art. 1.-07A, Sec. (1)(a).)

Sec. 113.005. Duties of County Clerk

(a) On receipt of a tax lien notice from the comptroller, the county clerk shall immediately:

(1) record the notice in the state tax lien book;

(2) note on the notice the date and hour of its recording;

(3) enter in an alphabetical index the name of each person to whom the notice applies, along with the volume and page number of the state tax lien book where the notice is recorded;

(4) furnish to the comptroller, on a form prescribed by the comptroller, a notice showing that the tax lien notice is recorded and filed, the date and hour of its recording and filing, and the volume and page number of the state tax lien book where the lien is recorded; and

(5) send the comptroller a statement of the fee due for recording and indexing the lien.

(b) This section prevails over conflicting provisions of other law. (Title 122A, Art. 1.07A, Secs. (1)(b), (c), (d) (part), (e); V.A.C.S. Title 122A, Art. 1.07A—1, Sec. 1.)

Sec. 113.006. Effect of Filing Tax Lien Notice

(a) The filing and recording of a tax lien notice constitutes a record of the notice.

(b) One tax lien notice is sufficient to cover all taxes of the same nature that may accrue after the filing of the notice. (Title 122A, Art. 1.07, Sec. (1)(e)(i) (part); Art. 1.07A, Sec. (1)(d) (part).)

Sec. 113.007. Evidence of Tax Payment

A payment in whole or in part of a tax secured by a state tax lien may be evidenced by a receipt, acknowledgment, or release signed by an authorized representative of the state agency that filed the lien. (Title 122A, Art. 1.07A, Sec. (2)(a)(i).)

Sec. 113.008. Release of Lien on Specific Property

(a) With the approval of the attorney general, the comptroller may release a state tax lien on specific real or personal property when payment of the reasonable cash market value of the property is made to the comptroller.

(b) The value of the property to be released shall be determined in the manner prescribed by the comptroller. (Title 122A, Art. 1.07A, Sec. (4).)

Sec. 113.009. Filing of Tax Lien Release

(a) A tax lien release shall be filed in the office of the county clerk in the manner that other releases are filed. On the filing of a release, the county clerk shall release the state tax lien filed with the clerk in accordance with the regulations of the clerk's office.

(b) The county clerk is entitled to the customary fee for the filing of a release at no expense to the state. The payment of the fee constitutes the full fee for the filing and indexing of the release of the tax lien notice. (Title 122A, Art. 1.07A, Secs. (2)(a)(ii), (iii).)

Sec. 113.010. Release of Lien by Assignee

A release in whole or in part by an assignee of the state's claim for a tax and of its tax lien or of a judgment for a tax secured by a tax lien may be filed and recorded with the county clerk for the same fee and in the same manner as a release by the comptroller or by another state agency that may file a notice of a lien in the state tax lien records. (Title 122A, Art. 1.07A, Sec. (3).)

Sec. 113.011. Liens Filed With Highway Department

The comptroller shall furnish to the State Department of Highways and Public Transportation each release of a tax lien filed by the comptroller with that department. (Title 122A, Art. 1.07A, Sec. (2)(a)(iv).)

[Sections 113.012–113.100 reserved for expansion]

SUBCHAPTER B. APPLICATIONS AND STATUS OF STATE TAX LIENS

Sec. 113.101. Applicability of Lien Before Filing

(a) No lien created by this title is effective against a person listed in Subsection (b) of this section who acquires a lien, title, or other right or interest in property before the filing, recording, and indexing of the lien:

(1) on real property, in the county where the property is located; or

(2) on personal property, in the county where the taxpayer resided at the time the tax became due and payable or in the county where the taxpayer filed the report.

(b) This section applies to a bona fide purchaser, mortgagee, holder of a deed of trust, judgment creditor, or any other person who acquired the lien, title, or right or interest in the property for bona fide consideration. (Title 122A, Art. 1.07, Sec. (1)(c).)

Sec. 113.102. Applicability of Lien to Merchandise Purchase

No lien created by this title is effective against a bona fide purchaser for value of goods, wares, or merchandise daily exposed for sale in the regular course of business if the purchase and actual or constructive possession of the goods, wares, or merchandise is completed before the goods, wares, or merchandise are seized under a valid legal writ or other lawful process. (Title 122A, Art. 1.07, Sec. (1)(f)(i).)

Sec. 113.103. Applicability of Lien to Financial Institutions

(a) A bank or savings and loan institution is not required to recognize the claim of the state to a deposit or to withhold payment of a deposit to a depositor or to the depositor's order unless the bank or institution has been served by the comptroller with a notice of the state's claim.

(b) Notice of a state claim must be in writing and be served by certified mail to the bank or institution or served personally on the president or any vice-president, cashier, or assistant cashier of the bank or institution. (Title 122A, Art. 1.07, Sec. (1)(f)(ii).)

Sec. 113.104. Preferential Transfers

(a) The comptroller may recover in a suit brought in Travis County by the attorney general the property or the value of property transferred in a preferential transfer.

(b) The transfer of property or an interest in property by a person who at the time of the transfer is insolvent and has received or withheld money as a tax under this title or who is delinquent in the payment of a

tax imposed by this title is a preferential transfer if the transfer occurred during the six-month period before the date of the filing of a tax lien notice against the transferor as permitted by this chapter and if the transfer is made with intent to defraud the state. The transfer of the property or the interest in property without adequate and sufficient consideration creates a rebuttable presumption that the transfer was made with intent to defraud the state. A transfer with sufficient consideration creates a rebuttable presumption that the transfer was not made with intent to defraud the state.

(c) All property subject to execution of a transferee in a preferential transfer is subject to a prior lien in favor of the state to secure the recovery of the value of the property transferred in a preferential transfer.

(d) The remedies provided by this section are cumulative of other remedies of the comptroller as a creditor. (Title 122A, Art. 1.07, Sec. (1)(g).)

Sec. 113.105. Tax Lien; Period of Validity

The state tax lien on personal property and real estate continues until the taxes secured by the lien are paid. (Title 122A, Art. 1.07B, Sec. (1).)

Sec. 113.106. Lien; Suit to Determine Validity

(a) In an action to determine the validity of a state tax lien, the lien shall be:

(1) perpetuated and foreclosed; or

(2) nullified.

(b) If a lien is perpetuated and foreclosed, no further action or notice on the judgment is required, and the notice of the state tax lien on record continues in effect.

(c) If all or part of a lien is nullified, a certified copy of the judgment may be filed with the county clerk of the county where the tax lien notice was filed and may be recorded in the same manner as a release by the comptroller.

(d) Execution, order for sale, or other process for the enforcement of the lien may be issued on the judgment at any time. (Title 122A, Art. 1.-07B, Secs. (2), (3).)

Sec. 113.107. Assignment of Judgment on Lien

(a) A judgment perpetuating and foreclosing a tax lien may be transferred and assigned for the amount of the taxes covered in the judgment and may be reassigned by a subsequent holder.

(b) An assignment shall be filed and recorded and shall be released in the same manner as are liens before judgment.

(c) If notice of the assignment is given as provided by Subchapter E of Chapter 111 of this code, the assignee is fully subrogated to and succeeds to all rights, liens, and remedies of the state. (Title 122A, Art. 1.-07B, Sec. (4).)

[Sections 113.108–113.200 reserved for expansion]

SUBCHAPTER C. UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

Sec. 113.201. Place of Filing

(a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the county clerk of the county in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state; and

(2) in all other cases in the office of the county clerk of the county where the taxpayer resides at the time of filing of the notice of lien. (V.A.C.S. Title 122A, Art. 1.07C, Sec. 1.)

Sec. 113.202. Certification

Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary. (V.A.C.S. Title 122A, Art. 1.07C, Sec. 2.)

Sec. 113.203. Duties of Filing Officer

(a) If a notice of a federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in Subsection (b) of this section is presented to the filing officer and:

(1) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of Section 9.403(d), Uniform Commercial Code, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in Section 113.201 of this code, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director, and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge, or subordination of any tax lien is presented to the secretary of state for filing, he shall:

(1) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(2) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of a federal tax lien referred to in Subsection (a) or any of the certificates or notices referred to in Subsection (b) is presented for filing with any other filing officer specified in Section 113.201 of this code, he shall permanently attach the refiled notice of the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of a federal tax lien or certificate or notice affecting the lien, filed on or after January 1, 1972, naming a particular person, and if a notice or certificate is on file, giving the date and hour of fil-

ing of each notice or certificate. The fee for a certificate is $1. Upon request the filing officer shall furnish a copy of any notice of a federal tax lien or notice or certificate affecting a federal tax lien for a fee of $1 per page. (V.A.C.S. Title 122A, Art. 1.07C, Sec. 3.)

Sec. 113.204. Fees

The fee under this subchapter for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(1) for a notice of tax lien, $2;

(2) for a certificate of discharge or subordination, $1; and

(3) for all other notices, including a certificate of release or non-attachment, $1. (V.A.C.S. Title 122A, Art. 1.07C, Sec. 4.)

Sec. 113.205. Purpose

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. The fees specified under the provisions of this subchapter for filing and indexing a notice of lien or certificate or notice affecting a tax lien shall be assessed in lieu of fees for such filing and indexing provided in Article 3930, Revised Civil Statutes of Texas, 1925, as amended. (V.A.C.S. Title 122A, Art. 1.07C, Sec. 5.)

Sec. 113.206. Short Title

This subchapter may be cited as the Uniform Federal Tax Lien Registration Act. (V.A.C.S. Title 122A, Art. 1.07C, Sec. 6.)

SUBTITLE C. TAX CLEARANCE FUND

CHAPTER 131. TAX CLEARANCE FUND

Section

131.001. Tax Clearance Fund
131.002. Allocation to Available School Fund and Enforcement Funds
131.003. Priority of Allocations From Tax Clearance Fund
131.004. Amounts of Transfers
131.005. Day of Month That Transfers Are Payable
131.006. Transfers From General Revenue Fund
131.007. Transfers From Special Fund to General Revenue Fund
131.008. Highway Cost Index Committee; Transfers to State Highway Fund
131.009. Allocations to Children's Assistance Account: Effect

SUBTITLE C. TAX CLEARANCE FUND

CHAPTER 131. TAX CLEARANCE FUND

Sec. 131.001. Tax Clearance Fund

The tax clearance fund is a fund in the state treasury. (V.A.C.S. Art. 7083a, Sec. 2 (part).)

Sec. 131.002. Allocation to Available School Fund and Enforcement Funds

(a) Before any other allocation is made each month under this chapter, the comptroller shall transfer from the tax clearance fund to the available school fund and to each fund created for the enforcement of

state taxes the portion of the tax clearance fund that is dedicated or allocated to the available school fund or the enforcement fund.

(b) On August 31 of each year, the comptroller shall transfer to the available school fund the amount of money that is dedicated or allocated to the available school fund and that has been deposited to the credit of the tax clearance fund between the fifth working day of August and August 31. (V.A.C.S. Art. 7083a, Sec. 2 (part), Sec. 2, Subsec. (4-c), Par. D.)

Sec. 131.003. Priority of Allocations From Tax Clearance Fund

(a) During the months of September, October, November, December, January, February, and March of each fiscal year, transfers from the tax clearance fund in the amounts required by Section 131.004 of this code shall be made in the following order to the following funds or accounts:

(1) the children's assistance account of the Texas Department of Human Resources fund;

(2) the medical assistance account of the Texas Department of Human Resources fund;

(3) the state contribution account of the Teacher Retirement System trust fund;

(4) the state highway fund;

(5) the foundation school fund; and

(6) the general revenue fund.

(b) During the months of April and May of each fiscal year, transfers from the tax clearance fund in the amounts required by Section 131.004 of this code shall be made in the following order to the following funds or accounts:

(1) the farm-to-market road fund;

(2) the children's assistance account of the Texas Department of Human Resources fund;

(3) the medical assistance account of the Texas Department of Human Resources fund;

(4) the state contribution account of the Teacher Retirement System trust fund;

(5) the state highway fund;

(6) the foundation school fund; and

(7) the general revenue fund.

(c) During the months of June, July, and August of each fiscal year, transfers from the tax clearance fund in the amounts required by Section 131.004 of this code shall be made in the following order to the following accounts or funds:

(1) the farm-to-market road fund;

(2) the children's assistance account of the Texas Department of Human Resources fund;

(3) the medical assistance account of the Texas Department of Human Resources fund;

(4) the state contribution account of the Teacher Retirement System trust fund;

(5) the state highway fund; and

(6) the general revenue fund. (V.A.C.S. Art. 7083a, Sec. 2, Subsecs. (2), (3) (part), (4-a) (part), (4-b) (part), (4-c) (part), (4-d) (part), (5) (part), (7) (part).)

Sec. 131.004. Amounts of Transfers

(a) The amount transferred each month from the tax clearance fund to the children's assistance account is one-twelfth of the amount appro-

priated by the legislature for the fiscal year for the purpose of assistance to dependent children under Section 31.001, Human Resources Code.

(b) The amount transferred each month from the tax clearance fund to the medical assistance account is one-twelfth of the amount appropriated by the legislature for the fiscal year for the purpose of providing medical assistance under Chapter 32, Human Resources Code.

(c) The amount transferred to the farm-to-market road fund each month in which a transfer is required from the tax clearance fund to the farm-to-market road fund is $3 million.

(d) The amount transferred to the foundation school fund each month in which a transfer is required from the tax clearance fund to the foundation school fund is one-ninth of the estimate by the foundation school budget committee of the annual amount necessary to fund the foundation school program as described by Chapter 16, Texas Education Code. If the foundation school budget committee alters the estimate of funds needed for financing the foundation school program, the comptroller shall increase, diminish, or suspend transfers under this section so that by the end of the fiscal year there has been transferred to the foundation school fund sufficient money to fund the foundation school program.

(e) The amount transferred each month from the tax clearance fund to the state contribution account of the Teacher Retirement System trust fund is the equal monthly payment provided by Section 3.58, Texas Education Code. If the estimate provided by the board of trustees of the Teacher Retirement System varies from the actual amount of state contributions required, the amounts transferred shall be adjusted at the close of the fiscal year to equal the total amount of the state contribution as required by Section 3.58, Texas Education Code.

(f) The amount transferred each month from the tax clearance fund to the state highway fund is one-twelfth of the annual estimate made under Section 131.008 of this code as adjusted as required by that section.

(g) The amount transferred each month from the tax clearance fund to the general revenue fund is the remainder of the amounts credited to the tax clearance fund after all other transfers required by this chapter from the tax clearance fund have been made for the month. (V.A.C.S. Art. 7083a, Sec. 2, Subsecs. (2) (part), (4-a) (part), (4-b) (part), (4-c) (part), (4-d) (part), (5) (part), (7) (part); Art. 7083a.2, Sec. 3 (part).)

Sec. 131.005. Day of Month That Transfers Are Payable

(a) The transfers required by this chapter from the tax clearance fund to the children's assistance account of the Texas Department of Human Resources fund are payable on the first day of each month.

(b) The transfers required by this chapter from the tax clearance fund to the farm-to-market road fund shall be made on or before the fifth working day of each month that a transfer is required.

(c) The transfers required by this chapter from the tax clearance fund to the state highway fund shall be made no later than the sixth working day of each month. (V.A.C.S. Art. 7083a, Sec. 2, Subsecs. (2) (part), (4-c) (part), (4-d) (part).)

Sec. 131.006. Transfers From General Revenue Fund

If there is not sufficient money credited to the tax clearance fund to make a complete transfer required by this chapter from the tax clearance fund to the farm-to-market road fund, to the Teacher Retirement System trust fund, to the state highway fund, or to the children's assistance account of the Texas Department of Human Resources fund, the amount necessary to make a complete transfer, after deducting the amount trans-

ferred from the tax clearance fund, shall be transferred from the first money available from the general revenue fund to the farm-to-market road fund, the Teacher Retirement System trust fund, the state highway fund, and the children's assistance account of the Texas Department of Human Resources fund, as necessary. (V.A.C.S. Art. 7083a, Sec. 2, Subsecs. (4-c) (part), (4-d) (part), (4) (part); Art. 7083a.1 (part).)

Sec. 131.007. Transfers From Special Fund to General Revenue Fund

(a) The comptroller shall transfer to the general revenue fund, from each special fund to which a transfer from the tax clearance fund is made under this chapter, the amount of the credits to the special fund from all sources that exceeds the current biennial appropriations from that fund.

(b) Subsection (a) of this section does not apply to the farm-to-market road fund.

(c) Subsection (a) of this section does not authorize the transfer of credits from the state highway fund to the tax clearance fund or to any other fund. (V.A.C.S. Art. 7083a, Sec. 2, Subsecs. (5) (part), (4-b) (part), (4-d) (part).)

Sec. 131.008. Highway Cost Index Committee; Transfers to State Highway Fund

(a) The Highway Cost Index Committee consists of the governor or, in the governor's absence, the secretary of state; the lieutenant governor; and the comptroller.

(b) On or before November 1 of each even-numbered year, the Highway Cost Index Committee shall certify to the comptroller the estimated amount of transfers to the state highway fund that are required by this chapter for the following fiscal biennium.

(c) On or before August 31 of each year, the Highway Cost Index Committee shall certify to the comptroller the estimated amount of transfers to the state highway fund that are required by this chapter for the following fiscal year.

(d) On or before November 1 of each year, the Highway Cost Index Committee shall determine and certify to the comptroller:

(1) the amount of dedicated revenue earned for the state highway fund for the preceding fiscal year;

(2) the highway cost index for the preceding fiscal year;

(3) the difference, if any, between the amounts transferred under this chapter during the preceding fiscal year (exclusive of any adjustments made under this subsection during the preceding fiscal year) and the amounts that would have been transferred during the preceding fiscal year if the actual amount of dedicated revenue and the actual highway cost index for that year had been used to determine the amounts transferred; and

(4) The amount by which the transfers for the current fiscal year are to be adjusted to compensate for the amount of the difference determined under Subdivision (3) of this subsection.

(e) The amounts transferred to the state highway fund under this chapter shall be estimated and determined under the following formula:

Amount = (cost index × $750 million) − dedicated revenue.

(f) In the formula:

(1) "Amount" means the total yearly amount to be transferred from the tax clearance fund to the state highway fund.

(2) "Cost index" means the factor determined under Subsection (g) of this section.

(3) "Dedicated revenue" means the revenue credited to the state highway fund under the following:

(A) Chapters 151 and 153 of this code;

(B) Article 6686, Revised Civil Statutes of Texas, 1925, as amended;

(C) Sections 1 through 16, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a—1 et seq., Vernon's Texas Civil Statutes);

(D) Chapter 18, General Laws, Acts of the 41st Legislature, 5th Called Session, 1930, as amended (Article 6675a—6e, Vernon's Texas Civil Statutes);

(E) Section 2, Chapter 178, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 6675a—13½, Vernon's Texas Civil Statutes);

(F) Chapter 298, Acts of the 56th Legislature, Regular Session, 1959 (Article 6675a—5b, Vernon's Texas Civil Statutes);

(G) Chapter 456, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 6675a—6b, Vernon's Texas Civil Statutes);

(H) Chapter 517, Acts of the 58th Legislature, 1963, as amended (Article 6675a—6c, Vernon's Texas Civil Statutes);

(I) Chapter 707, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 6675a—6d, Vernon's Texas Civil Statutes); and

(J) Chapter 338, Acts of the 64th Legislature, 1975 (Article 6675a—5e.1, Vernon's Texas Civil Statutes).

(g) The State Department of Highways and Public Transportation shall compute the highway cost index for each fiscal year according to procedures approved by the Highway Cost Index Committee. The index for a fiscal year is determined upon the weighted combined costs of highway operations, maintenance, and construction for the fiscal year compared to those costs for the base fiscal year beginning on September 1, 1978. The highway cost index for the base fiscal year is 1.00. (Art. 7083a, Sec. 2, Subsec. (4-d) (part).)

Sec. 131.009. Allocations to Children's Assistance Account: Effect

The allocations made under this chapter to the children's assistance account of the Texas Department of Human Resources fund are in lieu of all other allocations and do not include funds received from the United States. (V.A.C.S. Art. 7083a, Sec. 2, Subsec. (4) (part), Art. 7083a.1 (part).)

SUBTITLE D. COMPACTS AND UNIFORM LAWS

CHAPTER 141. MULTISTATE TAX COMPACT

Section
141.001. Adoption of Multistate Tax Compact
141.002. Commission Member for This State
141.003. Local Government Council
141.004. Multistate Tax Compact Advisory Committee
141.005. Interstate Audit Article Adopted

SUBTITLE D. COMPACTS AND UNIFORM LAWS

CHAPTER 141. MULTISTATE TAX COMPACT

Sec. 141.001. Adoption of Multistate Tax Compact

The Multistate Tax Compact is adopted and entered into with all jurisdictions legally adopting it to read as follows:

MULTISTATE TAX COMPACT

ARTICLE I. PURPOSES

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. ELEMENTS OF INCOME TAX LAWS

Taxpayer Option, State and Local Taxes

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the

$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. DIVISION OF INCOME

1. As used in this article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the account-

ing procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f. o. b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is

performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS

Tax Credit

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. THE COMMISSION

Organization and Management

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall

be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(*l*) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any mat-

ter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. INTERSTATE AUDITS

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. ARBITRATION

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple tax-

ation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the

board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance

shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (V. A.C.S. Art. 7359a, Sec. 1.)

Sec. 141.002. Commission Member for This State

(a) The governor shall appoint the comptroller to represent this state on the Multistate Tax Commission created by Article VI of the compact.

(b) The comptroller may designate one of his division chiefs as an alternate representative on the commission.

(c) The office of Multistate Tax Compact Commissioner for Texas is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the office is abolished and this chapter expires effective September 1, 1989. (V.A.C.S. Art. 7359a, Sec. 2.)

Sec. 141.003. Local Government Council

After consultation with representatives of local governments, the governor shall appoint three persons who are representative of political subdivisions affected or likely to be affected by the compact. The comptroller and his alternate shall consult regularly with these appointees in accordance with Article VI 1(b) of the compact. (V.A.C.S. Art. 7359a, Sec. 3.)

Sec. 141.004. Multistate Tax Compact Advisory Committee

(a) The Multistate Tax Compact Advisory Committee is created. It consists of:

(1) the comptroller and his alternate designated under Section 141.002 of this code;

(2) the attorney general or his designee;

(3) two members of the senate appointed by the president of the senate; and

(4) two members of the house appointed by the speaker of the house.

(b) The comptroller is chairman of the advisory committee.

(c) The committee shall meet at the call of the chairman or at the request of a majority of the members, but in any event the committee shall meet at least three times a year.

(d) The committee may consider any matters relating to recommendations of the Multistate Tax Commission and the activities of the members representing this state on the commission. (V.A.C.S. Art. 7359a, Sec. 4.)

Sec. 141.005. Interstate Audit Article Adopted

The provisions of Article VIII of the compact, relating to interstate audits, are in force with respect to this state. (V.A.C.S. Art. 7359a, Sec. 5.)

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 151. LIMITED SALES, EXCISE, AND USE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Section
151.001. Short Title
151.002. Applicability of Definitions, Etc.
151.003. "Business"
151.004. "In This State"
151.005. "Sale" or "Purchase"
151.006. "Sale for Resale"
151.007. "Sales Price" or "Receipts"
151.008. "Seller" or "Retailer"
151.009. "Tangible Personal Property"
151.010. "Taxable Item"
151.011. "Use" and "Storage"

[Sections 151.012–151.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION AND RECORDS

151.021. Employees
151.022. Retroactive Effect of Rules
151.023. Investigations and Audits
151.024. Persons Who May be Regarded as Retailers
151.025. Records Required to be Kept
151.026. Out-of-State Records
151.027. Confidentiality of Tax Information
151.028. Federal Excise Tax Information
151.029. Remedies Not Exclusive

[Sections 151.030–151.050 reserved for expansion]

SUBCHAPTER C. IMPOSITION AND COLLECTION OF SALES TAX

151.051. Sales Tax Imposed
151.052. Collection by Retailer
151.053. Sales Tax Brackets
151.054. Gross Receipts Presumed Subject to Tax
151.055. Sales of Items Acquired for Lease or Rental
151.056. Property Consumed in Repairs and Contracts

[Sections 151.057–151.100 reserved for expansion]

SUBCHAPTER D. IMPOSITION AND COLLECTION OF USE TAX

151.101. Use Tax Imposed
151.102. User Liable for Tax
151.103. Collection by Retailer; Purchaser's Receipt
151.104. Sale for Storage, Use, or Consumption
151.105. Importation for Storage, Use, or Consumption
151.106. Registration of Retailers
151.107. Retailer Engaged in Business in This State

[Sections 151.108–151.150 reserved for expansion]

SUBCHAPTER E. RESALE AND EXEMPTION CERTIFICATES

Section
151.151. Resale Certificate
151.152. Resale Certificate: Form
151.153. Resale Certificate: Commingled Fungible Goods
151.154. Resale Certificate: Liability of Purchaser
151.155. Exemption Certificate

[Sections 151.156–151.200 reserved for expansion]

SUBCHAPTER F. SALES TAX PERMITS

151.201. Sales Tax Permits
151.202. Application for Permit
151.203. Suspension and Revocation of Permit
151.204. Reissued or New Permit After Revocation or Suspension
151.205. Appeals

[Sections 151.206–151.250 reserved for expansion]

SUBCHAPTER G. SELLER'S AND RETAILER'S SECURITY

151.251. Security Required
151.252. Temporary Permit
151.253. Security: Requirements
151.254. Exemption From Filing Security
151.255. Notice
151.256. Failure to Provide Security: Loss of Permit
151.257. Forfeiture of Security: Determination
151.258. Sale of Security
151.259. Security Insufficient to Pay Tax
151.260. Security Sufficient to Pay Tax
151.261. Notice to Cities
151.262. Suits by Attorney General

[Sections 151.263–151.300 reserved for expansion]

SUBCHAPTER H. EXEMPTIONS

151.301. "Exempted From the Taxes Imposed by This Chapter"
151.302. Sales for Resale
151.303. Previously Taxed Items: Use Tax Exemption or Credit
151.304. Occasional Sales
151.305. Coin-Operated Machine Sales
151.306. Transfers of Common Interests in Property
151.307. Exemptions Required by Prevailing Law
151.308. Items Taxed by Other Law
151.309. Governmental Entities
151.310. Religious, Educational, and Public Service Organizations
151.311. Property Used for Improvement of Realty of an Exempt Organization
151.312. Religious Periodicals and Writings
151.313. Health Care Supplies
151.314. Food and Meals
151.315. Water
151.316. Agricultural Items
151.317. Gas and Electricity
151.318. Property Used in Manufacturing

SUBCHAPTER H. EXEMPTIONS—Continued

Section
151.319. Newspapers and Property Used in Newspaper Publication
151.320. Magazines
151.321. Packaging Supplies and Wrapping
151.322. Containers
151.323. Telephone and Telegraph
151.324. Equipment Used Elsewhere for Mineral Exploration or Production
151.325. Solar Energy Devices
151.326. Broadcasting Stations
151.327. Motion Picture Films
151.328. Aircraft
151.329. Certain Ships and Ship Equipment
151.330. Interstate Shipments and Common Carriers
151.331. Rolling Stock; Train Fuel and Supplies

[Sections 151.332–151.400 reserved for expansion]

SUBCHAPTER I. REPORTS, PAYMENTS, AND METHODS OF REPORTING

151.401. Tax Due Dates
151.402. Tax Report Dates
151.403. Who Must File a Report
151.404. Manufacturers: Annual Report
151.405. Other Due Dates Set by Comptroller
151.406. Contents and Form of Report
151.407. Special Use Tax Reports
151.408. Accounting Basis for Reports
151.409. Reports and Payments: Where Made
151.410. Method of Reporting Sales Tax: General Rule
151.411. Method of Reporting: Sellers Having Sales Below Taxable Amount
151.412. Optional Method of Reporting: Percentage of Sales
151.413. Optional Method of Reporting: Small Grocers
151.414. "Retail Grocer" Defined
151.415. Assessment of Penalties and Interest Against Seller Using Optional Method of Reporting
151.416. Commingled Receipts and Tax
151.417. Direct Payment of Tax by Purchaser
151.418. Issuance of Direct Payment Permit
151.419. Application for Direct Payment Permit: Qualifications
151.420. Revocation of Direct Payment Permit
151.421. Voluntary Relinquishment of Direct Payment Permit
151.422. Cancellation or Termination of Direct Payment Permit: Duty of Permit Holder
151.423. Reimbursement to Taxpayer for Tax Collections
151.424. Discount for Prepayments
151.425. Forfeiture of Discount or Reimbursement
151.426. Credits and Refunds for Bad Debts, Returned Merchandise, and Repossessions
151.427. Deduction for Property on Which the Tax is Paid and Held for Resale

[Sections 151.428–151.500 reserved for expansion]

SUBCHAPTER J. TAX DETERMINATIONS

Section
151.501. Determination After the Filing of a Report
151.502. Determination: Penalty
151.503. Determination if No Report Filed
151.504. Determination When a Business is Discontinued
151.505. When Determination Becomes Final
151.506. Jeopardy Determination
151.507. Limitations on Determination
151.508. Offsets
151.509. Petition for Redetermination
151.510. Hearing on Redetermination
151.511. Redetermination
151.512. Interest
151.513. When Payment is Required
151.514. Notices
151.515. Proceedings Against Consumer

[Sections 151.516–151.600 reserved for expansion]

SUBCHAPTER K. PROCEDURES FOR COLLECTION OF DELINQUENT TAXES

151.601. Suit
151.602. Venue
151.603. Evidence: Comptroller's Certificate
151.604. Form of Action
151.605. Writs of Attachment
151.606. Service of Process
151.607. Limitation Period
151.608. Judgments
151.609. Notice to Holders of Assets Belonging to Delinquent
151.610. Seizure and Sale of Property
151.611. Notice of Sale of Seized Property
151.612. Sale of Seized Property; Disposition of Proceeds
151.613. Tax Collection on Termination of Business
151.614. Res Judicata
151.615. Tax Suit Comity

[Sections 151.616–151.700 reserved for expansion]

SUBCHAPTER L. PROHIBITED ACTS AND CIVIL AND CRIMINAL PENALTIES

151.701. Use of Stamps or Tokens Prohibited
151.702. Collection of Tax on Amount of Federal Excise Tax
151.703. Failure to Report or Pay Tax
151.704. Prohibited Advertising; Criminal Penalty
151.705. Collection of Use Tax; Criminal Penalty
151.706. Exemption Certificate; Criminal Penalty
151.707. Resale Certificate; Criminal Penalty
151.708. Selling Without Permit; Criminal Penalty
151.709. Failure to Furnish Report or Information; Criminal Penalty
151.710. General Criminal Penalty
151.711. Limitations on Prosecutions

[Sections 151.712–151.800 reserved for expansion]

SUBCHAPTER M. DISPOSITION OF PROCEEDS

151.801. Disposition of Proceeds

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 151. LIMITED SALES, EXCISE, AND USE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. Short Title

This chapter may be cited as the Limited Sales, Excise, and Use Tax Act. (Title 122A, Art. 20.01 (part).)

Sec. 151.002. Applicability of Definitions, Etc.

The definitions and other provisions of this chapter relating to the collection, administration, and enforcement of the taxes imposed by this chapter, including the requirements for sales tax permits, apply to the parties to a sale of a taxable item that is exempted from the taxes imposed by this chapter but that is subject to the taxes imposed by a city under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes). (Title 122A, Arts. 20.01 (part), 20.01(AA).)

Sec. 151.003. "Business"

"Business" means an activity of or caused by a person for the purpose of a direct or indirect gain, benefit, or advantage. (Title 122A, Art. 20.-01(C).)

Sec. 151.004. "In This State"

"In this state" means within the exterior limits of Texas and includes all territory within these limits ceded to or owned by the United States. (Title 122A, Art. 20.01(E).)

Sec. 151.005. "Sale" or "Purchase"

"Sale" or "purchase" means any of the following when done or performed for consideration:

(1) a transfer of title or possession of tangible personal property or the segregation of tangible personal property in contemplation of a transfer of its title or possession;

(2) the exchange, barter, lease, or rental of tangible personal property;

(3) the performance of a taxable service;

(4) the production, fabrication, processing, printing, or imprinting of tangible personal property for consumers who directly or indirectly furnish the materials used in the production, fabrication, processing, printing, or imprinting;

(5) the furnishing and distribution of tangible personal property by a social club or fraternal organization to anyone;

(6) the furnishing, preparation, or service of food, meals, or drinks;

(7) a transfer of the possession of tangible personal property if the title to the property is retained by the seller as security for the payment of the price; or

(8) a transfer of the title or possession of tangible personal property that has been produced, fabricated, or printed to the special order of the customer. (Title 122A, Arts. 20.01(G), (K).)

Sec. 151.006. "Sale for Resale"

"Sale for resale" means a sale of:

(1) tangible personal property to a purchaser who acquires the property for the purpose of reselling it in the United States of America or a possession or territory of the United States of America in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America as an integral part of a taxable service; or

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service. (Title 122A, Art. 20.01(S).)

Sec. 151.007. "Sales Price" or "Receipts"

(a) "Sales price" or "receipts" means the total amount for which a taxable item is sold, leased, or rented, valued in money, without a deduction for the cost of:

(1) the taxable item sold, leased, or rented;

(2) the materials used, labor or service employed, interest, losses, or other expenses;

(3) the transportation of tangible personal property before the sale; or

(4) transportation incident to the performance of a taxable service.

(b) The total amount for which a taxable item is sold, leased, or rented includes a service that is a part of the sale and the amount of credit given to the purchaser by the seller.

(c) "Sales price" or "receipts" does not include any of the following if separately identified to the customer by such means as an invoice, billing, sales slip or ticket, or contract:

(1) a cash discount allowed on the sale;

(2) the amount charged for tangible personal property returned by a customer if the total amount charged is refunded by cash or credit;

(3) a refund of the charges for the performance of a taxable service;

(4) the amount of tax imposed by the United States on or with respect to retail or wholesale sales of tires or fishing equipment, whether imposed on the retailer, wholesaler, or consumer under Subtitle D or E, Title 26, United States Code;

(5) finance, carrying and service charges, or interest from credit extended on sales of taxable items under a conditional sales contract or other contract providing for the deferred payment of the purchase price;

(6) the value of tangible personal property taken by a seller in trade as all or part of the consideration for a sale of a taxable item;

(7) a charge for transportation of tangible personal property after the sale, including a separately stated charge for transportation of tangible personal property segregated in contemplation of the transfer of possession or title with the terms of the sale at a price fixed F.O.B. at the seller's place of business;

(8) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the tangible personal property sold;

(9) the face value of United States coin or currency in a sale of that coin or currency in which the total consideration given by the purchaser exceeds the face value of the coin or currency; or

(10) a voluntary gratuity or a reasonable mandatory charge for the service of a meal or food products, including soft drinks and candy, for immediate human consumption when the service charge is separated from the sales price of the meal or food product and identified as a gratuity or tip and when the total amount of the service charge is disbursed by the employer to employees who customarily and regularly provide the service. (Title 122A, Arts. 20.01(D)(1) (part), (D)(2), (H), (L); 20.021(A) (part).)

Sec. 151.008. "Seller" or "Retailer"

(a) "Seller" or "retailer" means a person engaged in the business of making sales of taxable items of a kind the receipts from the sale of which are included in the measure of the sales or use tax imposed by this chapter.

(b) "Seller" and "retailer" include:

(1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;

(2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy; and

(3) a person regarded by the comptroller as a seller or retailer under Section 151.024 of this code. (Title 122A, Arts. 20.01(J)(1), (M).)

Sec. 151.009. "Tangible Personal Property"

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner. (Title 122A, Art. 20.01(P).)

Sec. 151.010 "Taxable Item"

"Taxable item" means tangible personal property. (Title 122A, Art. 20.01(W).)

Sec. 151.011. "Use" and "Storage"

(a) Except as provided by Subsections (b) and (e) of this section, "use" means the exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property and, except as provided by Section 151.056(b) of this code, includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

(b) "Use" does not include the sale of tangible personal property in the regular course of business or the transfer of tangible personal property as an integral part of a taxable service performed in the regular course of business.

(c) Except as provided by Subsections (d) and (e) of this section, "storage" means the keeping or retaining for any purpose in this state of tangible personal property sold by a retailer.

(d) "Storage" does not include the keeping or retaining of tangible personal property for sale in the regular course of business.

(e) Neither "use" nor "storage" includes the exercise of a right or power over, or the keeping or retaining of, tangible personal property for the purpose of:

(1) transporting the property outside the state for use solely outside the state; or

(2) processing, fabricating, or manufacturing the property into other property or attaching the property to or incorporating the property into other property to be transported outside the state for use solely outside the state. (Title 122A, Arts. 20.01(N), (O), (R).)

[Sections 151.012–151.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION AND RECORDS

Sec. 151.021. Employees

The comptroller may employ accountants, auditors, investigators, assistants, and clerks for the administration of this chapter and may delegate to employees the authority to conduct hearings, prescribe rules, and perform other duties required by this chapter. (Title 122A, Art. 20.-11(B).)

Sec. 151.022. Retroactive Effect of Rules

The comptroller may prescribe the extent to which a rule or ruling shall be applied without retroactive effect. (Title 122A, Art. 20.11(A) (part).)

Sec. 151.023. Investigations and Audits

The comptroller, or another person authorized by the comptroller in writing, may examine the books, records, papers, and equipment of a person who sells taxable items or of a person liable for the use tax and may investigate the character of the business of the person to verify the accuracy of the person's report or to determine the amount of tax that may be required to be paid if no report has been filed. (Title 122A, Art. 20.-11(D).)

Sec. 151.024. Persons Who May be Regarded as Retailers

If the comptroller determines that it is necessary for the efficient administration of this chapter to regard a salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains the tangible personal property that he sells, whether or not the sale is made in his own behalf or for the dealer, distributor, supervisor, or employer, the comptroller may so regard the salesman, representative, peddler, or canvasser, and may regard the dealer, distributor, supervisor, or employer as a retailer or seller for the purpose of this chapter. (Title 122A, Art. 20.01(J)(2).)

Sec. 151.025. Records Required to be Kept

(a) All sellers and all other persons storing, using, or consuming in this state a taxable item purchased from a retailer shall keep the records, receipts, invoices, and other pertinent papers in the form that the comptroller reasonably requires.

(b) A record required by Subsection (a) of this section shall be kept for not less than four years from the day that it is made unless the comptroller authorizes its destruction at an earlier date. (Title 122A, Art. 20.-11(C).)

Sec. 151.026. Out-of-State Records

A taxpayer is entitled to keep or store the taxpayer's records outside this state. If the comptroller requests to examine a record kept or stored outside this state, the taxpayer shall bring the record into this state for the examination or permit the comptroller to examine the record at the out-of-state location. (Title 122A, Art. 20.11(E).)

Sec. 151.027. Confidentiality of Tax Information

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

(b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection except as provided by Subsection (c) of this section.

(c) This section does not prohibit:

(1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, or by an official of the United States if a reciprocal agreement exists;

(2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;

(3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;

(4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this chapter against the same taxpayer who furnished the information; or

(5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected. (Title 122A, Art. 20.11(G).)

Sec. 151.028. Federal Excise Tax Information

The comptroller shall provide to each seller who sells taxable items subject to a tax under Subtitle D or E, Title 26, United States Code:

(1) information concerning the amount of federal excise tax collected from the manufacturer, wholesaler, retailer, or consumer; and

(2) tables for the computation of the sales price of taxable items. (Title 122A, Art. 20.031(N) (part).)

Sec. 151.029. Remedies Not Exclusive

An action taken by the comptroller or the attorney general under this chapter is not an election to pursue one remedy to the exclusion of any other remedy authorized by this chapter. (Title 122A, Art. 20.14.)

[Sections 151.030–151.050 reserved for expansion]

SUBCHAPTER C. IMPOSITION AND COLLECTION OF SALES TAX

Sec. 151.051. Sales Tax Imposed

(a) A tax is imposed on each sale of a taxable item in this state.

(b) The sales tax rate is four percent of the sales price of the taxable item sold. (Title 122A, Art. 20.02.)

Sec. 151.052. Collection by Retailer

(a) A seller who makes a sale subject to the sales tax imposed by this chapter shall add the amount of the tax to the sales price, and when the amount of the tax is added:

(1) it becomes a part of the sales price;

(2) it is a debt of the purchaser to the seller until paid; and

(3) if unpaid, it is recoverable at law in the same manner as the original sales price.

(b) The owner or former owner of tangible personal property, a factor of the owner or former owner, or an agent of the owner, former owner, or factor shall collect the sales tax and add the amount of the tax to the sales price of the tangible personal property if the person delivers the property to a consumer in this state or to another person for redelivery to a consumer in this state under a sale of the property that is not a sale for resale and that is made by a seller not engaged in business in this state.

(c) Wher several taxable items are sold together and at the same time, the sales tax is determined on the sum of the sales prices of the items sold exclusive of any item the sale of which is exempted by this chapter. (Title 122A, Arts. 20.021(A) (part), 20.01(I) (part).)

Sec. 151.053. Sales Tax Brackets

(a) If the sales price involves a fraction of a dollar, the sales tax to be added to the sales price shall be determined under the following schedule:

AMOUNT OF SALE	TAX
$ .01 to $ .12	No tax
.13 to .37	$ .01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04

(b) Successive brackets for the schedule in this section shall be computed by multiplying the percentage rate of the sales tax times the amount of the sale. A fraction of one cent that is less than one-half of one cent is not collected and a fraction of one cent that is equal to one-half of one cent or more is collected as one cent of tax. (Title 122A, Art. 20.021(A) (part).)

Sec. 151.054. Gross Receipts Presumed Subject to Tax

(a) Except as provided by Subsections (b) and (c) of this section, all gross receipts of a seller are presumed to have been subject to the sales tax until the contrary is established.

(b) The burden of showing that a sale of tangible personal property is a sale for resale is on the seller unless the seller receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate stating that the tangible personal prop-

erty is acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

(c) A sale of liquor, wine, beer, or malt liquor by the holder of a manufacturer's license, wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, or a general, local, or branch distributor's license issued under the Alcoholic Beverage Code to the holder of a retail license or permit issued under the Alcoholic Beverage Code is presumed to be a sale for resale. In a sale to which this section applies, the seller is not required to receive a resale certificate from the purchaser. (Title 122A, Arts. 20.021(F), (G) (part).)

Sec. 151.055. Sales of Items Acquired for Lease or Rental

(a) If a person purchases tangible personal property by means of a sale for resale for the purpose of renting or leasing the property for use but subsequently sells the property in an occasional sale before the person has collected and paid to the state an amount of sales tax on rental or lease charges equal to the amount of sales tax that would have been due if the person had not acquired the property at a sale for resale, the person at the time of the occasional sale shall include in his receipts from taxable sales the amount by which the purchase price of the item at the occasional sale exceeds the amount received from renting or leasing the property.

(b) If tangible personal property is rented or leased under an agreement that provides that all or a portion of the rental or lease payments may be credited against the purchase price of the item and the property is sold to the lessee, the lessor shall collect the sales tax only on that portion of the sales price that exceeds the amount of lease or rental charges on which the tax has previously been collected and paid. (Title 122A, Arts. 20.04(O) (2), (3).)

Sec. 151.056. Property Consumed in Repairs and Contracts

(a) A contractor or repairman is the consumer of tangible personal property furnished by him and incorporated into the property of his customer if the contract between the contractor or repairman and his customer contains a lump-sum price covering both the performance of the service and the furnishing of the necessary incidental material.

(b) A contractor or repairman is the seller of tangible personal property furnished by him and incorporated into the property of his customer, from whom he shall collect the tax, if the contract between the contractor or repairman and his customer contains separate amounts for the performance of the service and for the furnishing of the necessary incidental material. The tax rate is applied to the price of the materials as agreed in the contract or the price of the materials to the contractor or repairman, whichever is the greater.

(c) If a contractor or repairman has paid the sales tax to his supplier when the tangible personal property is purchased, the contractor or repairman may credit the amount of the tax paid to the supplier against the tax imposed as provided in Subsection (b) of this section with respect to a subsequent sale of the property.

(d) In this section, "contractor" or "repairman" means a person who performs a repair service on tangible personal property or makes an improvement on real estate and who, as a necessary or incidental part of

the service, incorporates tangible personal property into the property repaired or improved.

(e) This section does not apply to the use or consumption of tangible personal property as a necessary or incidental part of a taxable service. (Title 122A, Art. 20.01(T).)

[Sections 151.057–151.100 reserved for expansion]

SUBCHAPTER D. IMPOSITION AND COLLECTION OF USE TAX

Sec. 151.101. Use Tax Imposed

(a) A tax is imposed on the storage, use, or other consumption in this state of a taxable item purchased from a retailer for storage, use, or other consumption in this state.

(b) The tax is at the same percentage rate as is provided by Section 151.051 of this code on the sales price of the taxable item. (Title 122A, Art. 20.03.)

Sec. 151.102. User Liable for Tax

(a) The person storing, using, or consuming a taxable item in this state is liable for the tax imposed by Section 151.101 of this code, and except as provided by Subsection (b) of this section, the liability continues until the tax is paid to the state.

(b) A person storing, using, or consuming a taxable item in this state is not further liable for the tax imposed by Section 151.101 of this code if the person pays the tax to a retailer engaged in business in this state or other person authorized by the comptroller to collect the tax and receives from the retailer or other person a purchaser's receipt given as provided in Section 151.103 of this code. (Title 122A, Art. 20.031(A).)

Sec. 151.103. Collection by Retailer; Purchaser's Receipt

(a) A retailer engaged in business in this state who makes a sale of a taxable item for storage, use, or consumption in this state shall collect the use tax that is due from the purchaser and give the purchaser a receipt for the tax payment.

(b) The purchaser's receipt must be issued in the form and manner prescribed by the comptroller. (Title 122A, Art. 20.031(B) (part).)

Sec. 151.104. Sale for Storage, Use, or Consumption Presumed

(a) A sale of tangible personal property by a person for delivery in this state is presumed to be a sale for storage, use, or consumption in this state until the contrary is established.

(b) The burden of showing that a sale of tangible personal property for delivery in this state is not for storage, use, or consumption in this state is on the person making the sale unless the person receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate stating that the property is acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business. (Title 122A, Arts. 20.031(F), (G) (part).)

Sec. 151.105. Importation for Storage, Use, or Consumption Presumed

(a) Tangible personal property that is shipped or brought into this state by a purchaser is presumed, in the absence of evidence to the con-

trary, to have been purchased from a retailer for storage, use, or consumption in this state.

(b) A taxable service used in this state is presumed, in the absence of evidence to the contrary, to have been purchased from a retailer for use in this state. (Title 122A, Art. 20.031(L).)

Sec. 151.106. Registration of Retailers

(a) A retailer who sells a taxable item for storage, use, or consumption in this state shall register with the comptroller.

(b) The registration must include:

(1) the name and address of each agent of the retailer operating in the state;

(2) the location of all distribution or sales houses or offices or other places of business in the state; and

(3) other information that the comptroller requires.

(c) A retailer required to register under this section must comply with Subchapter G of this chapter. (Title 122A, Arts. 20.031(E), (M).)

Sec. 151.107. Retailer Engaged in Business in This State

For the purpose of this subchapter and in relation to the use tax, a retailer is engaged in business in this state if the retailer:

(1) maintains, occupies, or uses in this state permanently, temporarily, directly, or indirectly or through a subsidiary or agent by whatever name, an office, place of distribution, sales or sample room or place, warehouse, storage place, or any other place of business; or

(2) has a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling or delivering or the taking of orders for a taxable item. (Title 122A, Art. 20.031(B) (part).)

[Sections 151.108–151.150 reserved for expansion]

SUBCHAPTER E. RESALE AND EXEMPTION CERTIFICATES

Sec. 151.151. Resale Certificate

A purchaser may give a resale certificate for the acquisition of tangible personal property if the purchaser intends to sell, lease, or rent it in the regular course of business or transfer it as an integral part of a taxable service performed in the regular course of business or if, at the time of the sale, the purchaser is unable to ascertain whether it will be sold, leased, rented, or transferred in the regular course of business or used for some other purpose. (Title 122A, Arts. 20.021(G) (part), 20.031(G) (part).)

Sec. 151.152. Resale Certificate: Form

(a) A resale certificate must be substantially in the form prescribed by the comptroller.

(b) A resale certificate must:

(1) be signed by the purchaser and contain the purchaser's name and address;

(2) state the purchaser's tax permit number or that the purchaser's application for a tax permit is pending before the comptroller; and

(3) contain a description of the tangible personal property sold, leased, or rented by the purchaser in the regular course of business or transferred as an integral part of a taxable service performed in

the regular course of business. (Title 122A, Arts. 20.021(H), 20.-031(H).)

Sec. 151.153. Resale Certificate: Commingled Fungible Goods

If a purchaser gives a resale certificate with respect to the purchase of fungible goods and then commingles the goods with other similar fungible goods for which a resale certificate was not given, sales from the mass of commingled fungible goods are deemed to be sales of goods covered by the resale certificate until the quantity of goods covered by the certificate equals the quantity of goods sold. (Title 122A, Arts. 20.-021(K), 20.031(K).)

Sec. 151.154. Resale Certificate: Liability of Purchaser

(a) If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business, the purchaser shall be liable for payment of the sales tax on the fair market rental value for any period during which the tangible personal property is used other than for retention, demonstration, or display. The fair market rental value of the tangible personal property is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for his use. If the item has no fair market rental value, the original purchase price shall be the measure of the tax. At any time, the person making the divergent use may cease paying tax on the fair market rental value and pay sales tax on the original purchase price without credit for taxes previously paid on the fair market rental value.

(b) A purchaser of tangible personal property who gives a resale certificate is not liable for the tax imposed by this chapter if he donates the property to an organization exempted under Section 151.309 or 151.-310(a)(1) or (2) of this code; except that any use by the purchaser of the property other than retention, demonstration, or display shall be subject to taxes imposed by Subsection (a) of this section. (Title 122A, Arts. 20.021(I), 20.031(I).)

Sec. 151.155. Exemption Certificate

(a) If a purchaser certifies in writing to a seller that a taxable item sold, leased, or rented to the purchaser will be used in a manner or for a purpose that qualifies the sale of the item for an exemption from the taxes imposed by this chapter, and if the purchaser then uses the item in some other manner or for some other purpose, the purchaser is liable for the payment of the sales tax on the fair market rental value for any period during which the item is used in the divergent manner or for the divergent purpose. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the property for his use. If the item has no fair market rental value, the original purchase price shall be the measure of the tax. At any time, the person making the divergent use may cease paying tax on the fair market rental value and pay sales tax on the original purchase price without credit for taxes previously paid on the fair market rental value.

(b) A purchaser of tangible personal property who gives an exemption certificate is not liable for the tax imposed by this chapter if he donates the property to an organization exempted under Section 151.309 or 151.310(a)(1) or (2) of this code; except that any use by the purchaser of the property other than retention, demonstration, or display shall be

subject to taxes imposed by Subsection (a) of this section. (Title 122A, Art. 20.04(B)(1), (2).)

[Sections 151.156–151.200 reserved for expansion]

SUBCHAPTER F. SALES TAX PERMITS

Sec. 151.201. Sales Tax Permits

(a) The comptroller shall issue without charge to an applicant who qualifies under Section 151.202 of this code and under Subchapter G of this chapter a separate permit for each place of business in this state.

(b) The holder of a permit shall display it conspicuously in the place of business to which it applies.

(c) A permit is valid only for the person and the place of business to which it applies and is nonassignable. (Title 122A, Art. 20.021(D).)

Sec. 151.202. Application for Permit

(a) A person desiring to be a seller in this state shall file with the comptroller an application for a permit for each place of business.

(b) An application must:

(1) be on a form prescribed by the comptroller;

(2) state the name under which the applicant transacts or intends to transact business;

(3) give the address of the place of business to which the permit is to apply;

(4) contain any other information required by the comptroller; and

(5) be signed by the owner if the owner is an individual, a member or partner if the owner is an association or partnership, or an executive officer or other person authorized by the corporation to sign the application if the owner is a corporation. (Title 122A, Art. 20.021(C).)

Sec. 151.203. Suspension and Revocation of Permit

(a) If a person fails to comply with a provision of this chapter or with a rule of the comptroller adopted under this chapter and relating to the sales tax, the comptroller, after a hearing, may revoke or suspend one or more permits issued to the person.

(b) A person whose permit the comptroller proposes to revoke or suspend is entitled to 20 days' written notice of the time and place of the hearing on the revocation or suspension. At the hearing the person must show cause why each permit should not be suspended or revoked.

(c) The comptroller shall give written notice of the revocation or suspension of a permit to the holder of the permit.

(d) Notices under this section may be served on the permit holder personally or may be mailed to the permittee's address as shown in the records of the comptroller. (Title 122A, Art. 20.021(E) (part).)

Sec. 151.204. Reissued or New Permit After Revocation or Suspension

(a) A new permit may not be issued to a former holder of a revoked permit unless the comptroller is satisfied that the person will comply with the provisions of this chapter and the rules of the comptroller relating to the sales tax.

(b) The comptroller may prescribe the terms under which a suspended permit may be reissued. (Title 122A, Art. 20.021(E) (part).)

Sec. 151.205. Appeals

A taxpayer may appeal the revocation or suspension of a tax permit in the same manner that appeals are made from a final deficiency determination. (Art. 20.021(E) (part).)

[Sections 151.206–151.250 reserved for expansion]

SUBCHAPTER G. SELLER'S AND RETAILER'S SECURITY

Sec. 151.251. Security Required

(a) An applicant for a sales tax permit or for registration as a retailer under Section 151.106 of this code must file with the comptroller adequate security for the payment of the taxes imposed by this chapter.

(b) If the holder of a sales tax permit or a retailer registered under Section 151.106 of this code who is exempted under Section 151.254 of this code from filing security under this subchapter is determined by the comptroller to be delinquent in the payment of the taxes imposed by this chapter, the comptroller shall require the holder or retailer to file with the comptroller adequate security for the payment of the taxes imposed by this chapter.

(c) For the purposes of Subsection (b) of this section, a holder of a permit or a retailer is delinquent in the payment of the taxes imposed by this chapter if the holder or retailer fails to file all reports due or to pay any determination before the day the determination could be paid without additional penalty.

(d) If the comptroller determines that it is necessary to ensure compliance with this chapter, the comptroller may require security from a person as a condition to retaining a permit under this chapter. (Title 122A, Arts. 20.021(N)(1) (part), (2) (part), (3) (part); Art. 20.09(J) (part).)

Sec. 151.252. Temporary Permit

(a) The comptroller may issue a temporary sales tax permit or retailer's registration to an applicant for a period determined by the comptroller in order to arrange for and provide the security required by this subchapter.

(b) A temporary permit or registration expires without further notice on the expiration date shown on the temporary permit or registration. (Title 122A, Art. 20.021(N)(2) (part).)

Sec. 151.253. Security: Requirements

(a) The security required by this subchapter may be a cash bond, a bond from a surety company chartered or authorized to do business in this state, a certificate of deposit, a certificate of savings or U.S. Treasury bond, an assignment of negotiable stocks or bonds that has been approved by the comptroller, or any other security deemed by the comptroller to be sufficient for the payment of taxes imposed by this chapter.

(b) The comptroller shall fix the amount of security required in each case, taking into consideration the amount of tax that has or is expected to become due from the person under this chapter and the Local Sales and Use Tax Act and the necessity to protect the state against the failure to pay these taxes, except that the maximum amount of security that may be required is the lesser of $50,000 or three times the amount of the person's average quarterly tax liability.

(c) A bond qualifying under this subchapter must be a continuing instrument and a new and separate obligation for the penal sum named in the bond for each calendar year or portion of a calendar year while the

bond is in effect. The bond must remain in effect until the surety or sureties are released and discharged. (Title 122A, Art. 20.021(N)(1) (part).)

Sec. 151.254. Exemption From Filing Security

(a) A person who has filed security under this subchapter is exempted from the security requirements of this subchapter and is entitled, on request, to have the comptroller return, refund, or release the security if in the judgment of the comptroller the person has for two consecutive years continuously complied with the conditions of the security filed under this subchapter.

(b) A person who received a sales tax permit or was registered as a retailer before January 1, 1974, and has not been determined to be delinquent as provided by Section 151.251(b) of this code or been required to file security under this subchapter is exempted from filing security. (Title 122A, Arts. 20.021(N)(3) (part), (5) (part).)

Sec. 151.255. Notice

(a) If the comptroller determines that the holder of a permit or a registered retailer is required to file security under Section 151.251(b) of this code, the comptroller shall notify the person in writing that security is required to be filed and state the amount of security set by the comptroller.

(b) Notice under this subsection shall be mailed to the permit holder or registered retailer at the address shown in the comptroller's records. (Title 122A, Arts. 20.021(N)(3) (part), (5) (part).)

Sec. 151.256. Failure to Provide Security: Loss of Permit

If a person fails to provide security under this subchapter as provided by Section 151.251(b) of this code, the comptroller shall revoke or suspend the permit or retailer's registration of the person as provided by Section 151.203 of this code. (Title 122A, Art. 20.021(N)(8) (part).)

Sec. 151.257. Forfeiture of Security: Determination

(a) If a person who has filed a security under this subchapter fails to pay the taxes imposed by this chapter or by a city under the Local Sales and Use Tax Act or fails to file a tax return required by this chapter or under the Local Sales and Use Tax Act, the comptroller shall issue a deficiency or jeopardy determination containing a demand for the amount of taxes, penalties, and interest due. The determination shall state that if payment is not made on or before the last day that the deficiency may be paid without incurring further penalty, the security or a part of the security may be forfeited.

(b) If the security filed by the person is a surety bond, the comptroller shall send a copy of the determination to each surety on the bond and shall demand payment from both the person filing the bond and each surety. (Title 122A, Art. 20.021(N)(6) (part).)

Sec. 151.258. Sale of Security

(a) If necessary to recover an amount of tax, penalty, or interest, the comptroller may sell security deposited under this subchapter. A sale shall be public and notice of the sale may be given personally or by mail to the person who deposited the security.

(b) If the notice is given by mail, the comptroller may send it to the last known address appearing in the records of the comptroller.

(c) Subject to the requirement of additional security required by Section 151.260 of this code, the comptroller shall return to the depositor any

security remaining after the sale and after recovering the amount of tax, penalty, and interest due from the depositor. (Title 122A, Art. 20.09(J) (part).)

Sec. 151.259. Security Insufficient to Pay Tax

(a) If payment of the tax due is not made and the forfeiture of the security does not satisfy the delinquency, the comptroller shall suspend or revoke the permit or registration of the taxpayer as provided by Section 151.203 of this code.

(b) If the permit or registration is suspended, the comptroller shall certify to the attorney general the amount of taxes, penalties, and interest delinquent under this chapter.

(c) A permit or registration revoked or suspended under this section may not be reinstated until all taxes, penalties, and interest have been paid and another security is filed with the comptroller. The comptroller shall set the amount of the security subject only to the maximum amounts provided by Section 151.253(b) of this code. (Title 122A, Art. 20.021(N)(6) (part).)

Sec. 151.260. Security Sufficient to Pay Tax

(a) If the security is forfeited in whole or in part and no delinquency remains, the comptroller shall demand from the person new or additional security to be filed before the expiration of 10 days after the date the notice of the demand is given.

(b) The amount of the new or additional security shall be set by the comptroller subject only to the maximum amounts as provided by Section 151.253(b) of this code.

(c) If the person fails to file the amount of the new or additional security before the expiration of the 10-day period, the comptroller shall suspend or revoke the permit or registration of the taxpayer as provided by Section 151.203 of this code and certify the name and address of the person to the attorney general. (Title 122A, Art. 20.021(N)(6) (part).)

Sec. 151.261. Notice to Cities

If a permit or registration is revoked or suspended under this subchapter, the comptroller shall notify the applicable city of any delinquency under the Local Sales and Use Tax Act. (Title 122A, Arts. 20.021(N)(6) (part), (8) (part).)

Sec. 151.262. Suits by Attorney General

(a) The attorney general may file suit for an injunction prohibiting a person from engaging in the business of selling taxable items subject to the taxes imposed by this chapter if the person engages in that business and does not have a valid permit or retailer's registration issued to him by the comptroller for each place of business.

(b) The attorney general shall bring suit against a person whose name is certified to him under Section 151.259(b) of this code, the person's sureties, or both, to collect the amount of delinquent tax due.

(c) The attorney general may bring suit on a surety bond against the sureties without making the person who is the principal obligor a party to the suit.

(d) Venue for a suit under this section is in Travis County. (Title 122A, Arts. 20.021(N)(6) (part), (7), (8) (part).)

[Sections 151.263–151.300 reserved for expansion]

SUBCHAPTER H. EXEMPTIONS

Sec. 151.301. "Exempted From the Taxes Imposed by This Chapter"

If a taxable item is exempted from the taxes imposed by this chapter, the sale, storage, use or other consumption of the item is not subject to the sales tax imposed by Section 151.051 of this code or the use tax imposed by Section 151.101 of this code if the item meets the qualifications for exemption as provided in this subchapter; and when an item is exempted from the taxes imposed by this chapter the receipts from its sale are excluded from the computation of the taxes. (Title 122A, Art. 20.04(A).)

Sec. 151.302. Sales for Resale

The sale for resale of a taxable item is exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(O) (part).)

Sec. 151.303. Previously Taxed Items: Use Tax Exemption or Credit

(a) The storage, use, or other consumption of a taxable item the sale of which is subject to the sales tax is exempted from the use tax imposed by Subchapter D of this chapter.

(b) The storage, use, or other consumption of a taxable item on which the person storing, using, or consuming the item has paid a use tax is exempted from the use tax imposed by Subchapter D of this chapter.

(c) A taxpayer is entitled to a credit against the use tax imposed by Subchapter D of this chapter on a taxable item in an amount equal to the amount of any similar tax paid by the taxpayer in another state on the sale, purchase, or use of the taxable item if the state in which the tax was paid provides a similar credit for a taxpayer of this state. (Title 122A, Arts. 20.04(J), (K).)

Sec. 151.304. Occasional Sales

(a) An occasional sale of a taxable item and the storage, use, or consumption of a taxable item the sale or transfer of which to a consumer is made by an occasional sale are exempted from the taxes imposed by this chapter.

(b) In this section, "occasional sale" means:

(1) one or two sales of taxable items at retail during a 12-month period by a person who does not habitually engage, or hold himself out as engaging, in the business of selling taxable items at retail;

(2) the sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business; or

(3) a transfer of all or substantially all the property used by a person in the course of an activity if after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer.

(c) Within the meaning of Subsection (b)(2) of this section, a separate division, branch, or identifiable segment of a business exists if before its sale the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the books of account or record.

(d) Within the meaning of Subsection (b)(3) of this section, the stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity have the real or ultimate ownership of the property of the corporation or other entity. (Title 122A, Arts. 20.04(I), 20.01(F).)

Sec. 151.305. Coin-Operated Machine Sales

(a) Tangible personal property when sold through a coin-operated vending machine for a total consideration of 16 cents or less is exempted from the taxes imposed by this chapter.

(b) Telephone service paid for by the insertion of coins into a coin-operated telephone is exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(U).)

Sec. 151.306. Transfers of Common Interests in Property

If an interest in tangible personal property is sold, under the terms of a good faith, bona fide contractual relationship, to another person who either before or after the sale owned or owns a joint or undivided interest in the property with the seller, and if the taxes imposed by this chapter have previously been paid on the tangible personal property, the tangible personal property is exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(V).)

Sec. 151.307. Exemptions Required by Prevailing Law

Tangible personal property or service that this state is prohibited from taxing by the law of the United States, the United States Constitution, or the Constitution of Texas is exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(C).)

Sec. 151.308. Items Taxed by Other Law

The following are exempted from the taxes imposed by this chapter:

(1) oil as taxed by Chapter 202 of this code;

(2) sulphur as taxed by Chapter 203 of this code;

(3) cigarettes as defined and taxed by Chapter 154 of this code;

(4) cigars and tobacco products as defined and taxed under Chapter 155 of this code;

(5) motor fuels and special fuels as defined, taxed, or exempted by Chapter 153 of this code;

(6) cement as taxed by Chapter 181 of this code;

(7) motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152 of this code;

(8) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Chapter 202, Alcoholic Beverage Code; and

(9) alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club. (Title 122A, Arts. 20.-04(D)(1), (4), (5).)

Sec. 151.309. Governmental Entities

A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following governmental entities is exempted from the taxes imposed by this chapter:

(1) the United States;

(2) an unincorporated instrumentality of the United States;

(3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States;

(4) this state; or

(5) a county, city, special district, or other political subdivision of this state. (Title 122A, Art. 20.04(H) (part).)

Sec. 151.310. Religious, Educational, and Public Service Organizations

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following organizations is exempted from the taxes imposed by this chapter:

(1) an organization created for religious, educational, or charitable purposes if no part of the net earnings of the organization benefits a private shareholder or individual;

(2) an organization qualifying for an exemption from federal income taxes under Section 501(c)(3), Internal Revenue Code, if the item sold, leased, rented, stored, used, or consumed relates to the purpose of the exempted organization and the item is not used for the personal benefit of a private stockholder or individual;

(3) a nonprofit organization engaged exclusively in providing athletic competition among persons under 19 years old if no financial benefit goes to an individual or shareholder; or

(4) a company, department, or association organized for the purpose of answering fire alarms and extinguishing fires or for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which receive no compensation or only nominal compensation for their services rendered, if the taxable item is used exclusively by the company, department, or association.

(b) The sale of, or contracting for the sale of, concessions at an event conducted by an organization exempted under Subsection (a)(3) of this section does not prevent the application of the exemption to that organization.

(c) An organization that qualifies for an exemption under Subsection (a)(1) of this section may hold one tax-free sale or auction during a calendar year and the tax-free sale or auction may continue for one day only. The sale of a taxable item by a qualified organization at a tax-free sale or auction is exempted from the sales tax imposed by Subchapter C of this chapter. The storage, use, or consumption of a taxable item acquired from a qualified organization at a tax-free sale or auction is exempted from the use tax imposed by Subchapter D of this chapter until the item is resold or subsequently transferred.

(d) If two or more organizations jointly hold a tax-free sale or auction, neither organization may hold another tax-free sale or auction during the calendar year. The employment of and payment of a reasonable fee to an auctioneer to conduct a tax-free auction does not disqualify an otherwise qualified organization from receiving the exemption provided by Subsection (c) of this section. (Title 122A, Arts. 20.04(H) (part), (AA), (DD), (GG).)

Sec. 151.311. Property Used for Improvement of Realty of an Exempt Organization

Tangible personal property purchased by a contractor for use in the performance of a contract for the improvement of realty for an organization exempted from the taxes imposed by this chapter is exempted from the taxes imposed by this chapter to the extent of the value of the tangible personal property used or consumed or both in the performance of the contract. (Title 122A, Art. 20.04(Y).)

Sec. 151.312. Religious Periodicals and Writings

Periodicals that are published or distributed by a religious faith and that consist wholly of writings promulgating the teaching of the faith

and books that consist wholly of writings sacred to a religious faith are exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.-04(T).)

Sec. 151.313. Health Care Supplies

The following items are exempted from the taxes imposed by this chapter:

(1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;

(2) insulin;

(3) a syringe or hypodermic needle used for medical purposes;

(4) a brace; hearing aid; orthopedic or dental prosthetic device; ileostomy, colostomy, or ileal bladder appliance; spectacles; or supplies or replacement parts for the listed items; and

(5) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment. (Title 122A, Art. 20.04(M).)

Sec. 151.314. Food and Meals

(a) Food is exempted from the taxes imposed by this chapter if:

(1) it is not served, prepared, or sold by or in a restaurant, drugstore, lunch counter, cafeteria, hotel, or like place of business or from a motor vehicle, pushcart, or other vehicle; and

(2) it is not served, prepared, or sold ready for immediate consumption.

(b) Carbonated and noncarbonated packaged soft drinks, diluted fruit juices sold in liquid or frozen form, ice, and candy are not exempted by Subsection (a) of this section.

(c) In this section, "food" includes cereal and cereal products, milk and milk products, ice cream, oleomargarine, meat and meat products, poultry and poultry products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, condiments and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa products, and combinations of the listed items. "Food" does not include alcoholic beverages, medicines, tonics, vitamins, or medicinal preparations in any form.

(d) Food and drink purchased by a common carrier for the purpose of serving passengers traveling en route aboard the carrier are exempted from the taxes imposed by this chapter.

(e) Food, meals, soft drinks, and candy for human consumption are exempted from the taxes imposed by this chapter if:

(1) served by a public or private school, school district, student organization, or parent-teacher association under an agreement with the proper school authorities in an elementary or secondary school during the regular school day or by a parent-teacher association during a fund-raising sale the proceeds of which do not benefit an individual;

(2) sold by a church or at a function of a church; or

(3) served to a patient or inmate of a hospital or other institution licensed by the state for the care of humans.

(f) Food, candy, carbonated beverages, and diluted juices are exempted from the taxes imposed by this chapter if sold at an exempt sale quali-

fying under this subsection or if stored or used by the purchaser of the item at the exempt sale. A sale is exempted under this subsection if:

(1) the sale is made by a person under 18 years old who is a member of a nonprofit organization devoted to the exclusive purpose of education or religious or physical training or by a group associated with a public or private elementary or secondary school;

(2) the sale is made as a part of a fund-raising drive sponsored by the organization or group; and

(3) all net proceeds from the sale go to the organization or group for its exclusive use. (Title 122A, Arts. 20.04(F), (L), (EE).)

Sec. 151.315. Water

Water is exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(D)(2).)

Sec. 151.316. Agricultural Items

The following items are exempted from the taxes imposed by this chapter:

(1) horses, mules, and work animals;

(2) animal life the products of which ordinarily constitute food for human consumption;

(3) feed for farm and ranch animals;

(4) feed for animals that are held for sale in the regular course of business;

(5) seeds and annual plants the products of which:

(A) ordinarily constitute food for human consumption; or

(B) are to be sold in the regular course of business;

(6) fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or employed on a farm or ranch in the production of:

(A) food for human consumption;

(B) feed for animal life; or

(C) other agricultural products to be sold in the regular course of business;

(7) fertilizer;

(8) machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business; and

(9) machinery and equipment exclusively used in the processing, packing, or marketing of agricultural products by the original producer at a location operated by the original producer exclusively for processing, packing, or marketing the producer's own products. (Title 122A, Art. 20.04(N).)

Sec. 151.317. Gas and Electricity

(a) Gas and electricity are exempted from the taxes imposed by this chapter except when sold for commercial use.

(b) The sale, production, distribution, lease, or rental of, and the use, storage, or other consumption in this state of, gas and electricity, except when sold for residential or commercial use, are exempted from the taxes imposed by a city under the Local Sales and Use Tax Act, unless sales for

residential use are further exempted by the city as provided by the Local Sales and Use Tax Act.

(c) In this section:

(1) "Residential use" means use in a family dwelling or in a multifamily apartment or housing complex or building or a part of a building occupied as a home or residence.

(2) "Commercial use" means use by a person engaged in selling, warehousing, or distributing a commodity or a professional or personal service, but does not include use by a person engaged in:

(A) processing tangible personal property for sale as tangible personal property;

(B) exploring for, or producing and transporting, a material extracted from the earth;

(C) agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation; or

(D) electrical processes such as electroplating, electrolysis, and cathodic protection. (Title 122A, Art. 20.04(R).)

Sec. 151.318. Property Used in Manufacturing

(a) The following items are exempted from the taxes imposed by this chapter:

(1) tangible personal property that will become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale; and

(2) tangible personal property used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation.

(b) The exemption includes chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable.

(c) The exemption does not include:

(1) machinery, equipment, or replacement parts or their accessories having a useful life when new in excess of six months;

(2) intraplant transportation equipment, maintenance or janitorial supplies or equipment, or other machinery, equipment, materials, or supplies that are used incidentally in a manufacturing, processing, or fabrication operation;

(3) hand tools; or

(4) office equipment or supplies, equipment or supplies used in sales or distribution activities, research or development of new products, or transportation activities, or other tangible personal property not used in an actual manufacturing, processing, or fabrication operation.

(d) In this section, "manufacturing" includes each operation beginning with the first stage in the production of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) that it has when transferred by the manufacturer to another. (Title 122A, Arts 20.01(U), 20.-04(E)(1).)

Sec. 151.319. Newspapers and Property Used in Newspaper Publication

(a) A newspaper sold or distributed by individual copy or by subscription is exempted from the taxes imposed by this chapter.

(b) A transaction involving a sale of a newspaper that has been produced, fabricated, or printed to the special order of a customer is exempted from the taxes imposed by this chapter if:

(1) the customer is responsible for gathering substantially all of the information contained in the newspaper and for formulating the design, layout, and format of the newspaper; and

(2) the customer would be entitled to the exemption provided by Subsection (d) of this section if the customer had a printing facility capable of processing and printing the newspaper and printed and processed the newspaper.

(c) A transaction involving the sale of a handbill, circular, flyer, advertising supplement, or similar item that is printed to the special order of a customer is exempted from the taxes imposed by this chapter if the item is printed for the exclusive purpose of being distributed as a part of a newspaper, is actually distributed as a part of the newspaper, and is delivered to the person who is responsible for the distribution of the newspaper in which the item is distributed and not to the customer.

(d) The following items are exempted from the taxes imposed by this chapter:

(1) tangible personal property that enters into and becomes an ingredient or component part of a newspaper, whether or not the newspaper is printed for ultimate sale in this state;

(2) tangible personal property used or consumed in or during a phase of actual printing or processing of a newspaper if the use of the property is necessary or essential to the processing or printing operation; and

(3) chemicals, catalysts, and other materials that are used for the purpose of producing a chemical or physical change or removing impurities during the printing or processing of a newspaper or are used for placing a newspaper in its final distributable form.

(e) The following items are not exempted by Subsection (d) of this section:

(1) machinery or equipment or their accessories or replacement parts having a useful life when new in excess of six months;

(2) intraplant transportation equipment, maintenance or janitorial supplies or equipment, or other machinery, equipment, materials, or supplies that are used incidentally to printing or processing;

(3) hand tools; or

(4) office equipment or supplies; equipment or supplies used in sales, distribution, or transportation activities, or in gathering information; or other tangible personal property used by a newspaper printer in an activity other than the actual printing and processing operation.

(f) In this section, "newspaper" means a publication that is printed on newsprint, the average sales price of which for each copy over a 30-day period does not exceed 75 cents, and that is printed and distributed at a daily, weekly, or other short interval for the dissemination of news of a general character and of a general interest. "Newspaper" does not include a magazine, handbill, circular, flyer, sales catalog, or similar printed item unless the printed item is printed for distribution as a part of a newspaper and is actually distributed as a part of a newspaper. For

the purposes of this section, an advertisement is news of a general character and of a general interest. (Title 122A, Arts. 20.01(Y)(1), 20.-04(BB)(1), (3), (4).)

Sec. 151.320. Magazines

(a) Subscriptions to magazines that are sold for a semiannual or longer period and are entered as second class mail are exempted from the taxes imposed by this chapter.

(b) "Magazine" means a publication that is usually paperbacked and sometimes illustrated, that appears at a regular interval, and that contains stories, articles, and essays by various writers and advertisements. (Title 122A, Arts. 20.01(Y)(2), 20.04(FF).)

Sec. 151.321. Packaging Supplies and Wrapping

(a) Internal and external wrapping, packing, and packaging supplies are exempted from the taxes imposed by this chapter if sold to a person for use, stored for future use, or used in wrapping, packing, or packaging tangible personal property for the purpose of furthering the sale of the property wrapped, packed, or packaged or for the purpose of furthering the distribution of a newspaper whether or not the newspaper is distributed without charge.

(b) In this section, "wrapping," "packing," and "packaging supplies and materials" include:

(1) wrapping paper, wrapping twine, bags, cartons, crates, crating material, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and

(2) excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay, laths, and other property used inside a package in order to shape, form, stabilize, preserve, or protect the contents. (Title 122A, Arts. 20.04(E)(2), (BB)(2).)

Sec. 151.322. Containers

(a) The following are exempted from the taxes imposed by this chapter:

(1) a container sold with its contents if the sales price of the contents is not taxed under this chapter;

(2) a nonreturnable container sold without contents to a person who fills the container and sells the contents and the container together; and

(3) a returnable container sold with its contents or resold for refilling.

(b) In this section:

(1) "Returnable container" means a container of a kind customarily returned for reuse by the buyer of the contents.

(2) "Nonreturnable container" means a container other than a returnable container. (Title 122A, Art. 20.04(E)(3).)

Sec. 151.323. Telephone and Telegraph

There are exempted from the taxes imposed by this chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use, or other consumption in this state of telephone and telegraph service. (Title 122A, Art. 20.04(D)(3).)

Sec. 151.324. Equipment Used Elsewhere for Mineral Exploration or Production

(a) The following items are exempted from the sales tax imposed by Subchapter C of this chapter:

(1) drill pipe, casing, tubing, and other pipe used for the exploration for or production of oil, gas, sulphur, or other minerals offshore not in this state; and

(2) tangible personal property exclusively used for the exploration for or production of oil, gas, sulphur, or other minerals offshore not in this state.

(b) Drilling equipment that is used for the exploration for or production of oil, gas, sulphur, or other minerals, that is built for exclusive use outside this state, and that is, on completion, removed forthwith from this state is exempted from the taxes imposed by this chapter.

(c) The delivery of items exempted by this section to the purchaser or lessee in this state does not disqualify the purchaser or lessee from the exemption if the property is removed from the state by any means, including by the use of the purchaser's or lessee's own facilities.

(d) The shipment to a place in this state of equipment exempted by this section for further assembly or fabrication does not disqualify the purchaser or lessee from the exemption if on completion of the further assembly or fabrication the equipment is removed forthwith from this state. This section applies to a sale that may occur when the equipment exempted is further assembled or fabricated if on completion the equipment is removed forthwith from the state. (Title 122A, Arts. 20.04(P) (part), (W), (X).)

Sec. 151.325. Solar Energy Devices

(a) A solar energy device is exempted from the taxes imposed by this chapter.

(b) "Solar energy device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy, and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power. (Title 122A, Art. 20.04(CC).)

Sec. 151.326. Broadcasting Stations

(a) Film, tape, photographs, transparencies, and graphic art material that is sold to or by or used by a licensed radio or television station subject to the regulatory jurisdiction of the Federal Communications Commission and that is used or consumed in or during a phase of broadcasting operations or program services are exempted from the taxes imposed by this chapter.

(b) Machinery, equipment, and replacement parts and accessories for machinery and equipment having a useful life when new in excess of six months are not exempted by this section. (Title 122A, Art. 20.04(FF).)

Sec. 151.327. Motion Picture Films

A motion picture film leased or licensed to or by a motion picture theater or to or by a licensed television station is exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(Z).)

Sec. 151.328. Aircraft

(a) Aircraft are exempted from the taxes imposed by this chapter if:

(1) sold to a person using the aircraft as a certificated or licensed carrier of persons or property;

(2) sold to a person and used for the exclusive purpose of training or instructing pilots in a licensed course of instruction; or

(3) sold to a foreign government or to persons who are not residents of this state.

(b) Repair services to aircraft operated by a certificated or licensed carrier of persons or property are exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(Q).)

Sec. 151.329. Certain Ships and Ship Equipment

The following items are exempted from the taxes imposed by this chapter:

(1) materials, equipment, and machinery that enter into and become component parts of a ship or vessel that is of eight or more tons displacement and is:

(A) used exclusively and directly in a commercial enterprise, including commercial fishing; or

(B) used commercially as a vessel for pleasure fishing by individuals as paying passengers on the vessel;

(2) a ship or vessel of eight or more tons displacement, that is used exclusively and directly in a commercial enterprise and is sold by the vessel's builder;

(3) materials and labor used in repairing, renovating, or converting a ship or vessel that is of eight or more tons displacement and that is used exclusively and directly in a commercial enterprise; and

(4) materials and supplies purchased by the owner or operator of a ship or vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies:

(A) are loaded on the ship or vessel and used in the maintenance and operation of the ship or vessel; or

(B) enter into and become component parts of the ship or vessel. (Title 122A, Art. 20.04(P) (part).)

Sec. 151.330. Interstate Shipments and Common Carriers

(a) The sale of tangible personal property that under the sales contract is shipped to a point outside this state is exempted from the sales tax imposed by Subchapter C of this chapter if the shipment is made by the seller by means of:

(1) the facilities of the seller;

(2) delivery by the seller to a carrier for shipment to a consignee at a point outside this state; or

(3) delivery by the seller to a customs broker or forwarding agent for shipment outside this state.

(b) The sale of tangible personal property to a common carrier is exempted from the sales tax imposed by Subchapter C of this chapter if the tangible personal property:

(1) is shipped by the seller, freight charges paid in advance or collect, via the purchasing carrier to a point outside this state; and

(2) is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier outside this state.

(c) The use of tangible personal property acquired outside this state and moved into this state for use as a licensed and certificated carrier of persons or property is exempted from the use tax imposed by Subchapter D of this chapter.

(d) The temporary storage of tangible personal property acquired outside this state and then moved into this state is exempted from the use

tax imposed by Subchapter D of this chapter if after being moved into this state the property is stored here temporarily and:

(1) is used solely outside this state; or

(2) is physically attached to or incorporated into other tangible personal property that is used solely outside this state.

(e) The storage or use of tangible personal property acquired outside this state for use as a repair or replacement part for and actually affixed in this state to a self-propelled vehicle that is a licensed and certificated common carrier of persons or property is exempted from the use tax imposed by Subchapter D of this chapter.

(f) The storage, use, or other consumption of tangible personal property that is acquired outside this state is exempted from the use tax imposed by Subchapter D of this chapter if the sale, use, or storage of the property would be exempted from the taxes imposed by this chapter had it been sold, leased, or rented in this state. (Title 122A, Art. 20.04(G).)

Sec. 151.331. Rolling Stock; Train Fuel and Supplies

Rolling stock, locomotives, and fuel and supplies essential to the operation of locomotives and trains are exempted from the taxes imposed by this chapter. (Title 122A, Art. 20.04(S).)

[Sections 151.332–151.400 reserved for expansion]

SUBCHAPTER I. REPORTS, PAYMENTS, AND METHODS OF REPORTING

Sec. 151.401. Tax Due Dates

(a) The taxes imposed by this chapter are due and payable to the comptroller quarterly on the last day of the month after the end of the quarter unless a taxpayer owes for a month more than the amount provided by Subsection (b) of this section.

(b) If a taxpayer owes more than $750 for a calendar month, the taxes for that month are due and payable on the last day of the month after that month, except that the taxpayer may file the tax reports on a quarterly basis if the taxpayer prepays the tax as permitted by Section 151.424 of this code. (Title 122A, Art. 20.05(A).)

Sec. 151.402. Tax Report Dates

A tax report required by this chapter for a reporting period is due on the same date that the tax payment for the period is due as provided by Section 151.401 of this code. (Title 122A, Art. 20.05(C)(1).)

Sec. 151.403. Who Must File a Report

(a) A person subject to the sales tax shall file a tax report.

(b) A retailer engaged in business in this state as provided by Section 151.107 of this code shall file a tax report with respect to the use tax.

(c) A person who acquires a taxable item, the storage, use, or consumption of which is subject to the use tax, shall file a tax report if the person did not pay the use tax to a retailer. (Title 122A, Art. 20.05(C)(2).)

Sec. 151.404. Manufacturers: Annual Report

A taxpayer who is engaged solely in manufacturing as defined by Section 151.318(d) of this code and who derives less than two percent of his receipts from taxable sales during a quarterly period is not required to file reports when provided by Section 151.402 of this code or pay the tax when provided by Section 151.401 of this code if the taxpayer files a tax

report and pays the tax on the basis of the calendar year or his fiscal year. (Title 122A, Art. 20.05(C)(5).)

Sec. 151.405. Other Due Dates Set by Comptroller

The comptroller may require a seller, retailer, or purchaser to file a return or pay the taxes imposed by this chapter for a quarterly period other than a calendar quarter or for a period other than a quarterly period if necessary to ensure the payment or to facilitate the collection of the taxes due. (Title 122A, Art. 20.05(F).)

Sec. 151.406. Contents and Form of Report

(a) Except as provided by Section 151.407 of this code, a tax report required by this chapter must:

(1) for sales tax purposes, show the amount of the total receipts of a seller for the reporting period;

(2) for use tax purposes, show the amount of the total receipts from sales by a retailer of taxable items during the reporting period for storage, use, or consumption in this state;

(3) show the amount of the total sales prices of taxable items that are subject to the use tax during the reporting period and that were acquired for storage, use, or consumption in this state by a purchaser who did not pay the tax to a retailer;

(4) show the amount of the taxes due for the reporting period; and

(5) include other information that the comptroller determines to be necessary for the proper administration of this chapter.

(b) The comptroller by rule may determine the manner of reporting gross proceeds from taxable rentals and leases of tangible personal property.

(c) The report must be in the form as prescribed by the comptroller.

(d) A tax report must be signed by the person required to file it or by the person's authorized agent. (Title 122A, Arts. 20.05(C)(1) (part), (3), (D).)

Sec. 151.407. Special Use Tax Reports

(a) The comptroller may require any person or class of persons who have in their possession or custody information relating to the sale of a taxable item, the storage, use, or consumption of which is subject to the use tax, to file a report.

(b) A report required under this section must:

(1) be filed at the time required by the comptroller; and

(2) contain the name and address of the purchaser of the tangible personal property, the sales price of the property, the date of the sale, and other information required by the comptroller. (Title 122A, Art. 20.11(F).)

Sec. 151.408. Accounting Basis for Reports

A taxpayer whose regular books are kept on a cash basis, accrual basis, or some other generally recognized accounting basis that accurately reflects the operation of the business may file the tax reports required by this chapter on the same basis that is used for the taxpayer's regular books. (Title 122A, Art. 20.05(C)(4).)

Sec. 151.409. Reports and Payments: Where Made

A tax report or tax payment shall be delivered to the office of the comptroller. (Title 122A, Art. 20.05(G).)

Sec. 151.410. Method of Reporting Sales Tax: General Rule

A seller shall compute the sales tax imposed by Subchapter C of this chapter to be paid to the comptroller by multiplying the percentage rate of the sales tax times the total receipts of the seller from all sales of taxable tangible personal property and of taxable services. (Title 122A, Art. 20.05(B) (part).)

Sec. 151.411. Method of Reporting: Sellers Having Sales Below Taxable Amount

(a) If not less than 50 percent of the total receipts of a seller from the sale of tangible personal property and taxable services come from separate transactions in which the sales price is 12 cents or less, the seller may exclude the receipts from these transactions when reporting and paying the sales tax.

(b) A seller may not exclude any receipts from sales as permitted under Subsection (a) of this section unless the seller has received from the comptroller before the filing of the tax report written approval allowing the exclusion, and all receipts from sales of taxable tangible personal property and taxable services are subject to the tax until the approval is granted.

(c) The comptroller shall approve the reporting and computation of the sales tax as permitted under Subsection (a) of this section by a seller if the seller qualifies for the exclusion and if the seller submits to the comptroller satisfactory evidence that the seller can and will maintain records adequate to substantiate the authorized exclusion. (Title 122A, Art. 20.05(B) (part).)

Sec. 151.412. Optional Method of Reporting: Percentage of Sales

(a) A seller who is a retail grocer, a seller who operates a separate grocery department having separate records that are separately auditable, or any other seller whose taxable receipts from the sale of taxable items are less than 10 percent of the total receipts of the seller may determine the total taxable receipts of the grocer, separate grocery department, or other seller by:

(1) adding the amount of all invoices for merchandise sold to the seller during the preceding calendar or fiscal year to obtain the total sum of merchandise purchased;

(2) adding the amount of all invoices for exempt merchandise sold to the seller during the preceding calendar or fiscal year to obtain the total sum of exempt merchandise purchased;

(3) dividing the sum obtained under Subdivision (2) of this subsection by the sum obtained under Subdivision (1) of this subsection to obtain a percentage relationship;

(4) multiplying the percentage obtained under Subdivision (3) of this subsection times the total sales by the seller for the reporting period to obtain the total nontaxable sales of the seller; and

(5) subtracting the total nontaxable sales of the seller obtained under Subdivision (4) of this subsection from the total sales by the seller during the reporting period to obtain the total taxable receipts of the seller from sales of tangible personal property.

(b) A seller determining taxable receipts as provided by Subsection (a) of this section shall add to the total taxable receipts the sales prices of all purchases made by the seller that are subject to the use tax and on which the use tax has not been paid.

(c) If the comptroller audits a seller who qualifies for and uses the method of reporting allowed by this section and determines that the ac-

tual tax liability of the seller computed on the actual taxable receipts of the seller differs from the amount reported and paid under this section, the comptroller shall collect the difference due to the state, if any, or refund or credit the seller with the difference that is an overpayment to the state, if any.

(d) The comptroller may not assess a penalty or interest against a seller because of an underpayment of the actual tax due disclosed by an audit under Subsection (c) of this section unless the audit discloses wilful evasion of the tax or fraud. The state may not pay interest on an overpayment disclosed by an audit under Subsection (c) of this section. (Title 122A, Arts. 20.05(I)(1)(a), (I)(2).)

Sec. 151.413. Optional Method of Reporting: Small Grocers

(a) A seller who is a retail grocer and whose annual total receipts do not exceed $100,000 may pay the taxes imposed by this chapter by multiplying 15 percent times the total receipts of the seller to obtain the amount of taxable receipts.

(b) A state audit of a retailer electing to report his taxable receipts as provided by this section is limited to determining whether or not the grocer is eligible to use this method. No additional tax may be assessed or a refund or credit granted because of a showing that the tax liability of the retail grocer electing this method of reporting differs or would differ under any other method of reporting.

(c) A retail grocer who elects to report under this section shall continue to report as provided by this section for three years unless the grocer's total receipts for a year exceed $100,000.

(d) If a retail grocer electing to report under this section has gross receipts in excess of $100,000 for a year, the grocer is ineligible to continue reporting under this section beginning on the first day of the calendar month after the month in which the limitation was exceeded, shall report the ineligibility to the comptroller, and shall immediately cease to use the method of reporting permitted by this section.

(e) Subsection (b) of this section does not apply to audits or the tax liability of a retail grocer who fails to report his ineligibility to the comptroller as required by Subsection (d) of this section. (Title 122A, Art. 20.05(I)(1)(b).)

Sec. 151.414. "Retail Grocer" Defined

In this subchapter, "retail grocer" means a retail vendor who sells food for human consumption off the premises, together with household supplies and nondurable household goods. (Title 122A, Art. 20.05(I)(1)(c).)

Sec. 151.415. Assessment of Penalties and Interest Against Seller Using Optional Method of Reporting

The comptroller may assess a penalty and interest against a seller using an optional method of reporting under Section 151.412 or Section 151.413 of this code if the seller fails to file a tax report on or before its due date or fails to remit the correct amount of tax due with the report. This section prevails over Section 151.412(d) and Section 151.413(b) of this code. (Title 122A, Art. 20.05(3) (part).)

Sec. 151.416. Commingled Receipts and Tax

A seller who has an accounting system under which the taxes collected under this chapter are commingled with the receipts from the sales of taxable items may compute his taxable receipts by:

(1) subtracting from the total receipts of the seller the receipts from the sales of items that are exempted or are specifically excluded from the taxes imposed by this chapter to obtain a remainder consisting of the commingled receipts from taxable sales and the taxes collected; and

(2) dividing this remainder by 1.04 to obtain a quotient that is the taxable receipts that may be reported under Section 151.410 of this code. (Title 122A, Art. 20.05(J) (part).)

Sec. 151.417. Direct Payment of Tax by Purchaser

(a) The holder of a direct payment permit issued by the comptroller may give a blanket exemption certificate to sellers who sell, lease, or rent taxable items to the holder of the direct payment permit. The blanket exemption certificate covers all future sales of taxable items to the permit holder and relieves the seller of the obligation of collecting the taxes imposed by this chapter from the permit holder.

(b) A blanket exemption certificate given under this section must contain the direct payment permit number and the statement that the direct payment permit holder agrees to accrue and pay to this state all taxes that are or may become due on the taxable items sold under the exemption certificate to the permit holder. (Title 122A, Art. 20.05(K) (part).)

Sec. 151.418. Issuance of Direct Payment Permit

(a) The comptroller shall issue a direct payment permit to an applicant for the permit who qualifies as provided by Section 151.419 of this code.

(b) The comptroller is the sole judge of an applicant's qualifications, and the comptroller's refusal to issue a permit to an applicant is not appealable.

(c) An applicant for a direct payment permit who has been denied the issuance of a permit may:

(1) request permission from the comptroller to submit an amended application; or

(2) submit a new application for a direct payment permit after a reasonable period after the denial of the original application. (Title 122A, Art. 20.05(K)(2).)

Sec. 151.419. Application for Direct Payment Permit: Qualifications

(a) A person desiring a direct payment permit must file with the comptroller a written application for the permit.

(b) The application must be accompanied with:

(1) an agreement that is signed by the applicant or a responsible officer of an applicant corporation, that is in a form prescribed by the comptroller, and that provides that the applicant agrees to:

(A) accrue and pay all taxes imposed by Subchapter D of this chapter on the storage and use of all taxable items sold to or leased or rented by the permit holder unless the items are exempted from the taxes imposed by this chapter;

(B) pay the imposed taxes quarterly on or before the last day of the month following the last month of the quarter; and

(C) waive the discount permitted by Section 151.423 of this code on the payment of all taxes under the direct payment permit only;

(2) a description, in the amount of detail that the comptroller requires, of the accounting method by which the applicant proposes to differentiate between taxable and exempt transactions; and

(3) records establishing that the applicant is a responsible person who annually purchases taxable items that have a value when purchased of $200,000 or more excluding the value of taxable items for which resale certificates were or could have been given. (Title 122A, Art. 20.05(K)(1).)

Sec. 151.420. Revocation of Direct Payment Permit

(a) A person to whom a direct payment permit has been issued holds the permit as a matter of revocable privilege and not as a matter of right. The comptroller on his own initiative may cancel a direct payment permit, and the cancellation is not appealable.

(b) A person whose direct payment permit is canceled by the comptroller is entitled to written notice of the cancellation, which shall be sent by the comptroller by registered mail. (Title 122A, Art. 20.05(K)(3) (part).)

Sec. 151.421. Voluntary Relinquishment of Direct Payment Permit

(a) The holder of a direct payment permit may notify the comptroller that the direct payment permit is to be voluntarily relinquished.

(b) A direct payment permit and the direct payment agreement remain valid and enforceable until the comptroller issues a termination notice. (Title 122A, Art. 20.05(K)(4) (part).)

Sec. 151.422. Cancellation or Termination of Direct Payment Permit: Duty of Permit Holder

(a) On the receipt of a notice issued under Section 151.420 of this code canceling a direct payment permit or of a notice issued under Section 151.421 of this code terminating a direct payment permit, the person who held the permit shall immediately notify each seller to whom a blanket exemption certificate has been given that the exemption certificate is no longer valid.

(b) The failure of a person to notify a seller as required by Subsection (a) of this section is a failure and refusal to pay the taxes imposed by this chapter by the person required to make the notification. (Title 122A, Arts. 20.05(K)(3) (part), (4) (part).)

Sec. 151.423. Reimbursement to Taxpayer for Tax Collections

A taxpayer may deduct and withhold one percent of the amount of taxes due from the taxpayer on a quarterly or monthly return as reimbursement for the cost of collecting the taxes imposed by this chapter. (Title 122A, Art. 20.05(E) (part).)

Sec. 151.424. Discount for Prepayments

(a) A taxpayer who prepays the taxpayer's tax liability on the basis of a reasonable estimate of the tax liability for a quarter in which a prepayment is made or for a month in which a prepayment is made may deduct and withhold two percent of the amount of the prepayment in addition to the amount permitted to be deducted and withheld under Section 151.423 of this code.

(b) In order to qualify for the deduction permitted by Subsection (a) of this section, the taxpayer must make the tax prepayment:

(1) on or before the 15th day of the second month of the calendar quarter for which the prepayment is made if the taxpayer pays the tax quarterly; or

(2) on or before the 15th day of the month for which the prepayment is made if the taxpayer pays the tax monthly.

(c) A taxpayer who prepays the tax liability as permitted by this section must file a report when due as provided by this chapter. The amount of a prepayment made by a taxpayer under this section shall be credited against the amount of actual tax liability of the taxpayer as shown on the tax report of the taxpayer. If there is a tax liability owed by the taxpayer in excess of the prepayment credit, the taxpayer shall send to the comptroller the remaining tax liability at the time of filing the quarterly or monthly report. The taxpayer is entitled to the deduction permitted under Section 151.423 of this code on the amount of the remaining tax liability.

(d) If the amount of a prepayment exceeds the actual tax liability, the excess of the prepayment shall be credited against future tax liability of the taxpayer or refunded to the taxpayer as provided by Subchapter C of Chapter 111 of this code. (Title 122A, Art. 20.05(E) (part).)

Sec. 151.425. Forfeiture of Discount or Reimbursement

If a taxpayer fails to file a report required by this chapter when due or to pay the tax when due, the taxpayer forfeits any claim to a deduction or discount allowed under Section 151.423 or Section 151.424 of this code. (Title 122A, Art. 20.05(E) (part).)

Sec. 151.426. Credits and Refunds for Bad Debts, Returned Merchandise, and Repossessions

(a) A seller may withhold the payment of the tax on a portion of the sales price of a taxable item that remains unpaid by the purchaser if:

(1) during the reporting period in which the item was sold, leased, or rented the seller determines that the unpaid portion will remain unpaid;

(2) the seller enters the unpaid portion of the sales price in the seller's books as a bad debt; and

(3) the bad debt is claimed as a deduction for federal tax purposes during the same or a subsequent reporting period.

(b) If the portion of a debt determined to be bad under Subsection (a) of this section is paid, the seller shall report and pay the tax on the portion during the reporting period in which the payment is made.

(c) A retailer is entitled to credit or reimbursement for taxes paid on the portion of:

(1) an account determined to be worthless and actually charged off for federal income tax purposes; and

(2) the remaining unpaid sales price of a taxable item when the item is repossessed under a conditional sales contract.

(d) A seller is entitled to credit for the amount of taxes paid on the amount of a refund or credit made to a purchaser under a bona fide agreement in which the sales price of a taxable item is renegotiated. This credit applies to a refund or credit made under an agreement in settlement of a claim for an alleged breach of warranty on a taxable item sold by the seller to the person with whom the agreement is made. (Title 122A, Arts. 20.021(L), (M).)

Sec. 151.427. Deduction for Property on Which the Tax is Paid and Held for Resale

(a) A seller who has paid the tax imposed by this chapter on the sales price of tangible personal property acquired for storage or use may deduct the amount of the tax paid if the seller resells, leases, or rents the item to another in the regular course of business before the seller has made any use of the property other than retaining, displaying, or demonstrating it while holding it for sale in the regular course of business.

(b) If a deduction is taken under Subsection (a) of this section, the person who sold the property to the seller may not receive a credit or refund with respect to the sale of the property to the seller.

(c) The deduction allowed by Subsection (a) of this section must be taken in accordance with any rule on the deduction made by the comptroller. (Title 122A, Art. 20.01(D)(1) (part).)

[Sections 151.428–151.500 reserved for expansion]

SUBCHAPTER J. TAX DETERMINATIONS

Sec. 151.501. Determination After the Filing of a Report

If a person has filed a tax report, the comptroller may issue a deficiency determination under Section 111.008 of this code. (Title 122A, Art. 20.06(A)(1) (part).)

Sec. 151.502. Determination: Penalty

The comptroller shall add a penalty of 25 percent of the amount of a deficiency determination if a part of the deficiency on which a determination is made is due to fraud or an intent to evade the application of this chapter or a rule made under this chapter or Chapter 111 of this code. (Title 122A, Art. 20.06(B).)

Sec. 151.503. Determination if No Report Filed

(a) If a person fails to file a report, the comptroller shall estimate the amount of receipts of the person subject to the sales tax, the amount of total sales prices of taxable items sold, leased, or rented by the person to another for storage, use, or consumption in this state, and the total sales prices of taxable items acquired by the person for storage, use, or consumption without the payment of the use tax to a retailer for each period or the total period for which the person failed to report as required by this chapter.

(b) The estimate required by Subsection (a) of this section may be made on any information available to the comptroller.

(c) On the basis of the estimate, the comptroller shall compute and determine the amount required to be paid to the state for each period.

(d) The comptroller shall add to the determination an amount equal to 10 percent of the amount computed under Subsection (c) of this section as a penalty.

(e) A determination under this section may be issued for one or more periods, and more than one determination may be issued for a single period. (Title 122A, Art. 20.06(E)(1).)

Sec. 151.504. Determination When a Business is Discontinued

If a business is discontinued, the comptroller may make a determination of tax liability under this subchapter before the date a report or tax payment is due with respect to the discontinued business. (Title 122A, Arts. 20.06(A)(2), (E)(2).)

Sec. 151.505. When Determination Becomes Final

A determination made under Section 151.501, 151.503, or 151.504 of this code becomes final on the expiration of 30 days after the day on which the determination was served by personal service or by mail, unless a petition for a redetermination is filed before the determination becomes final. (Title 122A, Art. 20.08(A)(2).)

Sec. 151.506. Jeopardy Determination

(a) If the comptroller believes that the collection of a tax required to be collected and paid to the state or the amount of a determination is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the tax collection is in jeopardy. The amount determined is due and payable immediately.

(b) A determination made under this section becomes final on the expiration of 20 days after the day on which the notice of the determination was served by personal service or by mail unless a petition for a redetermination is filed before the determination becomes final.

(c) If a determination made under this section becomes final without payment of the amount of the determination being made, the comptroller shall add to the amount a penalty of 10 percent of the amount of the tax and interest. (Title 122A, Arts. 20.07(A), (B).)

Sec. 151.507. Limitations on Determination

(a) A notice of a deficiency determination must be personally served or mailed within the period provided by Subchapter D, Chapter 111 of this code after the last day of the calendar month following the close of the regular reporting period of the taxpayer for which the amount is proposed to be determined or within the period provided by Subchapter D, Chapter 111 of this code after the report is filed, whichever period expires the later.

(b) If no tax report is filed, a notice of determination must be mailed or personally served within the period provided by Subchapter D, Chapter 111 of this code after the last day of the calendar month following the close of the regular reporting period of the taxpayer for which the amount is proposed to be determined.

(c) The limitations provided by Subsections (a) and (b) of this section do not apply to a determination proposed to be made:

(1) for the collection of an amount of sales tax on the sale of a taxable item if a deficiency notice has been given or is given for the collection of the use tax on the same taxable item; or

(2) for the collection of the use tax on the storage, use, or consumption of a taxable item if a deficiency notice has been or is given for the collection of the sales tax on the same taxable item. (Title 122A, Arts. 20.06(D)(1), (2).)

Sec. 151.508. Offsets

In making a determination, the comptroller may offset an overpayment for one or more periods against an underpayment, penalty, and interest accrued on the underpayment for the same period or one or more other periods. Any interest accrued on the overpayment shall be included in the offset. (Title 122A, Art. 20.06(F).)

Sec. 151.509. Petition for Redetermination

(a) A person against whom a determination has been made for taxes imposed by this chapter or any other person having a direct interest in the determination may file a petition with the comptroller requesting a

redetermination of the amount of taxes claimed to be owed. The petition must be filed before the determination becomes final and not thereafter.

(b) A person petitioning for a redetermination of a determination made under Sectio. 151.506 of this code must file, before the determination becomes final, security as the comptroller requires to ensure compliance with this chapter. The security may be sold by the comptroller in the manner provided by Section 151.611 of this code. (Title 122A, Arts. 20.07(C), 20.08(A)(1))

Sec. 151.510. Hearing on Redetermination

(a) If a petition for a redetermination is filed before the determination becomes final, the petitioner is entitled on a request stated in the petition to an oral hearing on the redetermination and to at least 20 days' notice of the time and place of the hearing.

(b) The comptroller may continue the hearing from time to time as is necessary. (Title 122A, Art. 20.08(B).)

Sec. 151.511. Redetermination

(a) The comptroller may decrease the amount of a determination at any time before the determination becomes final.

(b) The comptroller may increase the amount of a determination that is not final if the additional claim is asserted by the comptroller at or before a hearing on a redetermination.

(c) If an additional claim is asserted, the petitioner is entitled to a 30-day continuance of the hearing to permit the petitioner to obtain and present evidence applicable to the items on which the additional claim is based.

(d) An order or decision of the comptroller on a petition for redetermination becomes final 15 days after service on the petitioner of the notice of the order or decision. (Title 122A, Art. 20.08(C).)

Sec. 151.512. Interest

Unpaid taxes imposed by this chapter draw interest beginning 60 days after the date on which the tax or the amount of the tax required to be collected became due and payable to the state. (Title 122A, Art. 20.08(G) (part).)

Sec. 151.513. When Payment is Required

The amount of a determination made under Section 151.501, 151.503, or 151.504 of this code is due and payable 20 days after it becomes final. If the amount of the determination is not paid within 20 days after the day the determination became final, a penalty of 10 percent of the amount of the determination exclusive of penalties and interest shall be added. (Title 122A, Art. 20.08(E).)

Sec. 151.514. Notices

The comptroller shall give notice of a determination made under this subchapter promptly as provided by Sections 111.008(b) and (c) of this code. Any other notice required by this subchapter shall be given in the same manner. Notices under this subchapter are effective as provided by Section 111.008(c) of this code. (Title 122A, Arts. 20.06(C), (G); 20.08(F).)

Sec. 151.515. Proceedings Against Consumer

This chapter does not prohibit the comptroller from proceeding against a consumer for an amount of tax that the consumer should have paid but failed to pay. (Title 122A, Art. 20.08(A)(1) (part).)

[Sections 151.516–151.600 reserved for expansion]

SUBCHAPTER K. PROCEDURES FOR COLLECTION OF DELINQUENT TAXES

Sec. 151.601. Suit

The comptroller may bring an action in a court of this state, another state, or the United States to collect an amount of the taxes imposed by this chapter that is due and unpaid, including penalties and interest. The action shall be prosecuted by the attorney general. (Title 122A, Arts. 20.09(B) (part), (C), (G)(1) (part).)

Sec. 151.602. Venue

A suit brought under this subchapter against a taxpayer in a court of this state may be filed and heard in the county where the person owing the tax resides or has a place of business or in Travis County. (Title 122A, Art. 20.09(G)(1) (part).)

Sec. 151.603. Evidence: Comptroller's Certificate

In an action brought under this subchapter a certificate of the comptroller showing the delinquency is prima facie evidence of the determination of the tax or the amount of the tax, of the amount of penalties and interest stated, of the delinquency of the amounts stated, and of the compliance of the comptroller with this chapter in computing and determining the amounts due. (Title 122A, Arts. 20.09(E), (G)(1) (part).)

Sec. 151.604. Form of Action

A suit under this subchapter against any person for recovery of the tax is in the form of an action for debt. (Title 122A, Art. 20.09(G)(1) (part).)

Sec. 151.605. Writs of Attachment

In a suit under this subchapter, no bond or affidavit is required before the issuance of a writ of attachment. (Title 122A, Art. 20.09(D).)

Sec. 151.606. Service of Process

In a suit under this subchapter, a seller or retailer may be served with process as provided by the rules of civil procedure or by service on an agent or clerk in this state employed by the retailer or seller in a place of business in this state maintained by the seller or retailer. If process is served on the agent or clerk of the retailer or seller, a copy of the process shall forthwith be sent by registered mail to the retailer or seller at his principal or home office. (Title 122A, Arts. 20.09(F), (G)(1) (part).)

Sec. 151.607. Limitation Period

The limitation period provided by Section 111.203 of this code applies to a suit brought under this subchapter, except that the suit may be brought at any time within 3 years after a determination made under Subchapter J of this code becomes final or within 3 years after the last recording of a lien under this title. (Title 122A, Arts. 20.09(B) (part), (G)(1) (part).)

Sec. 151.608. Judgments

(a) A judgment in favor of the state obtained in an action under this chapter may be filed for record with the county clerk of any county in the state and when filed constitutes a lien on all of the real property located in the county and belonging to the person named in the judgment as the defendant. The lien applies to all real property in the county owned by the defendant at the time of the filing or acquired by him after the filing of the judgment.

(b) The lien has the force and effect of a judgment lien for 10 years after the date of the judgment unless the lien is released or discharged before the expiration of the 10-year period.

(c) On the payment in full of the amount of a judgment obtained under this chapter, the comptroller may release the lien.

(d) A prior judgment is not a bar to a subsequent suit under this chapter for additional taxes, penalties, and interest accruing after the prior judgment if the suit is brought before the expiration of the limitation period.

(e) Execution on a judgment obtained under this chapter may issue in the same manner as an execution under other judgments, and the sale under an execution is held as provided by the rules of civil procedure and the statutes of this state. (Title 122A, Arts. 20.09(G)(2), (3), (4).)

Sec. 151.609. Notice to Holders of Assets Belonging to Delinquent

(a) If a person is delinquent in the payment of an amount required to be paid or has not paid an amount claimed in a determination made against the person, the comptroller may notify personally or by registered mail any other person who:

(1) possesses or controls a credit or personal property belonging to the delinquent or the person to whom the unpaid determination is made; or

(2) owes a debt to the delinquent or person to whom the unpaid determination is made.

(b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent or person to whom the unpaid determination applies.

(c) A notice under this section may be given at any time within three years after the payment becomes delinquent or within three years after the last recording of a lien filed under this title, but not thereafter.

(d) On receipt of a notice given under this section, the person receiving the notice:

(1) within 20 days after receiving the notice, shall advise the comptroller of each credit and item of personal property belonging to the delinquent or person to whom an unpaid determination applies that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person or person to whom an unpaid determination applies; and

(2) may not transfer or dispose of the credit, property, or debt possessed, controlled, or owed by the person at the time the person received the notice for a period of 60 days after receipt of the notice, unless the comptroller consents to an earlier disposal.

(e) A notice under this section that attempts to prohibit the transfer or disposal of a deposit, credit, or item of personal property possessed or controlled by a bank is not effective unless it is delivered or mailed to the office of the bank at which the deposit is carried or the credit or property is held.

(f) A person who has received a notice under this section and who violates Subsection (d)(2) of this section is liable to the state for the amount of indebtedness of the person with respect to whose obligation the notice was given to the extent of the value of the credit, personal property, or debt transferred or disposed of. (Title 122A, Art. 20.09(A).)

Sec. 151.610. Seizure and Sale of Property

Before the expiration of three years after a person becomes delinquent in the payment of any amount under this chapter, the comptroller may seize and sell at public auction real and personal property of the person. A seizure made to collect the sales tax is limited only to property of the vendor that is not exempt from execution. (Title 122A, Art. 20.-09(H)(1).)

Sec. 151.611. Notice of Sale of Seized Property

(a) The delinquent person whose property is seized under Section 151.610 of this code is entitled to written notice of the sale of the property at least 20 days before the date of the sale.

(b) The notice must:

(1) contain a description of the property to be sold, a statement of the amount of the tax, penalties, interest, and costs due, the name of the delinquent person, and a statement that unless the amount due, including costs, is paid before the time of the sale as stated in the notice, the described property, or as much of it as necessary, will be sold;

(2) be enclosed in an envelope that is addressed to the delinquent person at the person's last known address or place of business, or if the amount due is for unpaid use taxes, the envelope must be addressed to the person at the person's last known residence or place of business in this state;

(3) be deposited in the United States mail, postage prepaid; and

(4) be published for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the seized property is to be sold or, if there is no newspaper of general circulation in that county, the notice must be posted in three public places in that county for 20 days before the date set for the sale. (Title 122A, Art. 20.09(H)(2).)

Sec. 151.612. Sale of Seized Property; Disposition of Proceeds

(a) The comptroller may sell at public auction, as provided in the notice, property seized under Section 151.610 of this code and may deliver to the purchaser a bill of sale for personal property sold and a deed for real property sold. A bill of sale or a deed vests in the purchaser the interest or title in the property held by the person liable for the amount.

(b) The comptroller may leave unsold property at the place of the sale at the risk of the person liable for the amount.

(c) The amount by which the proceeds from the sale exceeds the amount of taxes, penalties, interest, and costs shall be disposed of by the comptroller as follows:

(1) if before the sale of the property a person who is not the person liable for the amount and who has an interest in or lien on the property files notice of the interest or lien with the comptroller, the comptroller shall hold the amount of the excess pending a determination of the rights of respective parties in the amount of the excess by a court;

(2) if no notice is given under Subdivision (1) of this subsection and the person liable for the amount gives a receipt for the amount of the excess, the comptroller shall return the amount of the excess to the person; or

(3) if no notice is given under Subdivision (1) of this subsection and the comptroller is unable to obtain a receipt under Subdivision

(2) of this subsection, the comptroller shall deposit the amount of the excess with the treasurer who shall hold the amount as trustee for the owner subject to the order of the person liable for the amount or a successor of the person. (Title 122A, Arts. 20.09(H)(3), (4).)

Sec. 151.613. Tax Collection on Termination of Business

(a) If a seller who is liable for the payment of an amount under this chapter sells the business or the stock of goods of the business or quits the business, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt from the comptroller showing that the amount has been paid or a certificate stating that no amount is due.

(b) The purchaser of a business or stock of goods who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a business may request that the comptroller issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The comptroller shall issue the certificate or statement within 60 days after receiving the request or within 60 days after the day on which the records of the former owner of the business are made available for audit, whichever period expires later, but in either event the comptroller shall issue the certificate or statement within 90 days after the date of receiving the request.

(d) If the comptroller fails to mail the certificate or statement within the applicable period provided by Subsection (c) of this section, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

(e) A period of limitation during which the obligation of a purchaser under this section may be enforced begins when the former owner of the business sells the business or stock of goods or when a determination is made against the former owner, whichever event occurs later. (Title 122A, Art. 20.09(I).)

Sec. 151.614. Res Judicata

In the determination of a suit arising under this chapter, the rule of res judicata applies only if the liability at issue is for the same quarterly period as was at issue in a previously determined suit. (Title 122A, Art. 20.16.)

Sec. 151.615. Tax Suit Comity

A court of this state shall recognize and enforce a liability for a sales or use tax lawfully imposed by another state if the other state extends a like comity to this state. (Title 122A, Art. 20.17.)

[Sections 151.616–151.700 reserved for expansion]

SUBCHAPTER L. PROHIBITED ACTS AND CIVIL AND CRIMINAL PENALTIES

Sec. 151.701. Use of Stamps or Tokens Prohibited

No person may use stamps or tokens for the purpose of collecting or enforcing the collection of the taxes imposed by this chapter or for any other purpose connected with the taxes. (Title 122A, Art. 20.021(A) (part).)

Sec. 151.702. Collection of Tax on Amount of Federal Excise Tax

It is a violation of this chapter if a seller collects the tax imposed by this chapter on the sale of a taxable item for which the seller includes in the amount of the sales price the amount of a tax imposed under Subtitle D or E, Title 26, United States Code. (Title 122A, Art. 20.031(N) (part).)

Sec. 151.703. Failure to Report or Pay Tax

(a) A person who fails to file a report as required by this chapter or who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) The minimum penalty provided by Subsection (a) of this section is $1.

(c) A delinquent tax draws interest beginning 60 days from the due date. (Title 122A, Art. 20.05(H).)

Sec. 151.704. Prohibited Advertising; Criminal Penalty

(a) A retailer commits an offense if the retailer directly or indirectly advertises, holds out, or states to a customer or to the public that the retailer:

(1) will assume, absorb, or refund a part of the tax; or

(2) will not add the tax to the sales price of a taxable item sold, leased, or rented.

(b) This section does not prohibit a utility from billing a customer in one lump-sum price including the utility sales price and the amount of the tax imposed by this chapter.

(c) An offense under this section is a misdemeanor punishable by a fine of not more than $500. (Title 122A, Arts. 20.021(B); 20.031(C), (D) (part).)

Sec. 151.705. Collection of Use Tax; Criminal Penalty

A retailer engaged in business in this state who violates Section 151.-103 of this code commits a misdemeanor punishable by a fine of not more than $500. (Title 122A, Art. 20.031(D) (part).)

Sec. 151.706. Exemption Certificate; Criminal Penalty

(a) A person commits an offense if the person gives an exemption certificate to a seller for a taxable item that the person knows, at the time of the purchase, will be used in a manner other than that expressed in the exemption certificate.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $500. (Title 122A, Art. 20.04(B)(3).)

Sec. 151.707. Resale Certificate; Criminal Penalty

(a) A person commits an offense if the person gives a resale certificate to a seller for property that the person knows, at the time of purchase, is purchased for the purpose of use and not for the purpose of resale, lease, or rental by the person to another in the regular course of business or for transfer as an integral part of a taxable service performed in the regular course of business.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $500. (Title 122A, Arts. 20.021(J), 20.031(J), 20.-12(B).)

Sec. 151.708. Selling Without Permit; Criminal Penalty

(a) A person or officer of a corporation commits an offense if the person or corporation engages in business as a retailer in this state with-

out a permit required by this chapter or after the permit is suspended.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $500.

(c) A separate offense is committed each day that a person or officer of a corporation violates this section. (Title 122A, Art. 20.12(A).)

Sec. 151.709. Failure to Furnish Report or Information; Criminal Penalty

(a) A person commits an offense if the person refuses to furnish a report or other data as required by this chapter or by the comptroller as authorized by this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $500. (Title 122A, Art. 20.12(C).)

Sec. 151.710. General Criminal Penalty

Except as otherwise provided by this chapter, any violation of this chapter is a misdemeanor punishable by a fine of not more than $500.

Sec. 151.711. Limitations on Prosecutions

An indictment or information for a criminal offense brought under this chapter must be presented within four years after the commission of the offense or it is barred. (Title 122A, Art. 20.12(E).)

[Sections 151.712–151.800 reserved for expansion]

SUBCHAPTER M. DISPOSITION OF PROCEEDS

Sec. 151.801. Disposition of Proceeds

(a) Except for the amount allocated under Subsection (b) of this section, all proceeds from the collection of the taxes imposed by this chapter shall be deposited to the credit of the general revenue fund.

(b) The amount of the proceeds from the collection of the taxes imposed by this chapter on the sale, storage, or use of lubricating and motor oils used to propel motor vehicles over the public roadways shall be deposited to the credit of the state highway fund.

(c) The comptroller shall certify the amount to be deposited to the highway fund under Subsection (b) of this section to the treasurer on the basis of available statistical data indicating the estimated average or actual consumption or sales of lubricants used to propel motor vehicles over the public roadways. If satisfactory data are not available, the comptroller may require taxpayers who make taxable sales or uses of those lubricants to report to the comptroller as necessary to make the allocation required by Subsection (b) of this section.

(d) In this section, "motor vehicle" means a trailer, a semitrailer, or a self-propelled vehicle in or by which a person or property can be transported upon a public highway. "Motor vehicle" does not include a device moved only by human power or used exclusively on stationary rails or tracks, a farm machine, a farm trailer, a road-building machine, or a self-propelled vehicle used exclusively to move farm machinery, farm trailers, or road-building machinery. (Title 122A, Arts. 20.01(X), 20.13.)

CHAPTER 152. TAXES ON SALE, RENTAL, AND USE OF MOTOR VEHICLES

SUBCHAPTER A. GENERAL PROVISIONS

Section
152.001. Definitions
152.002. Total Consideration
152.003. Duties of Comptroller

[Sections 152.004–152.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION OF TAX

152.021. Retail Sales Tax
152.022. Tax on Motor Vehicle Purchased Outside This State
152.023. Tax on Motor Vehicle Brought Into State by New Texas Resident
152.024. Tax on an Even Exchange of Motor Vehicles
152.025. Tax on Gift of Motor Vehicle
152.026. Tax on Gross Rental Receipts
152.027. Tax on Metal Dealer Plates

[Sections 152.028–152.040 reserved for expansion]

SUBCHAPTER C. COLLECTION OF TAXES

152.041. General Collection Procedure
152.042. Collection of Tax on Metal Dealer Plates
152.043. Collection of Tax on Motor Vehicles Operated by Nonresidents
152.044. Payment by Seller
152.045. Collection of Tax on Gross Rental Receipts
152.046. Change in Tax Status of Motor Vehicle

[Sections 152.047–152.060 reserved for expansion]

SUBCHAPTER D. TAX ENFORCEMENT PROCEDURES

152.061. Registration of Motor Vehicle Purchased for Rental
152.062. Required Affidavits
152.063. Records
152.064. Tax Receipts
152.065. Registration as a Retailer; Permit
152.066. Deficiency Determination; Penalty and Interest
152.067. Petition for Redetermination of a Deficiency
152.068. Revocation of Motor Vehicle Retail Seller's Permit

[Sections 152.069–152.080 reserved for expansion]

SUBCHAPTER E. EXEMPTIONS

152.081. Driver Training Motor Vehicles
152.082. Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency
152.083. Lease of Motor Vehicle to Public Agency
152.084. Rental of Motor Vehicle to Public Agency
152.085. Rental of Motor Vehicle for Purposes of Re-Rental
152.086. Motor Vehicles Driven by Handicapped Persons
152.087. Fire Trucks and Ambulances
152.088. Motor Vehicles Used for Religious Purposes

[Sections 152.089–152.100 reserved for expansion]

SUBCHAPTER F. PENALTIES

Section
152.101. Penalty for Signing False Affidavit
152.102. Operation Without Payment of Tax
152.103. Failure to Keep Records

[Sections 152.104–152.120 reserved for expansion]

SUBCHAPTER G. DISPOSITION OF TAXES

152.121. Amount of Tax Sent to Comptroller
152.122. Allocation of Tax

CHAPTER 152. TAXES ON SALE, RENTAL, AND USE OF MOTOR VEHICLES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. Definitions

In this chapter:

(1) "Sale" includes:

(A) an installment and credit sale;

(B) an exchange of property for property or money;

(C) an exchange in which property is transferred but the seller retains title as security for payment of the purchase price; and

(D) any other closed transaction that constitutes a sale.

(2) "Retail sale" means a sale of a motor vehicle except:

(A) a sale in which the purchaser acquires a vehicle for the exclusive purpose of resale; or

(B) a sale of a vehicle that is operated under and in accordance with Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

(3) "Motor vehicle" includes:

(A) a self-propelled vehicle capable of transporting persons or property on a public highway;

(B) a trailer and semitrailer; and

(C) a house trailer as defined by the Certificate of Title Act (Article 6687—1, Vernon's Texas Civil Statutes).

(4) "Motor vehicle" does not include:

(A) a device moved only by human power;

(B) a device used exclusively on stationary rails or tracks;

(C) farm machinery, a farm trailer, or road-building machinery; or

(D) a self-propelled vehicle used exclusively to move a farm trailer, farm machinery, or road-building machinery.

(5) "Rental" means:

(A) an agreement by the owner of a motor vehicle to give for not longer than 180 days the exclusive use of that vehicle to another for consideration;

(B) an agreement by the original manufacturer of a motor vehicle to give exclusive use of the motor vehicle to another for consideration; or

(C) an agreement to give exclusive use of a motor vehicle to another for re-rental purposes.

(6) "Lease" means an agreement, other than a rental, by an owner of a motor vehicle to give for longer than 180 days exclusive use of the vehicle to another for consideration.

(7) "Public agency" means:

(A) a department, commission, board, office, institution, or other agency of this state or of a county, city, town, school district, hospital district, water district, or other special district or authority or political subdivision created by or under the constitution or the statutes of this state; or

(B) an unincorporated agency or instrumentality of the United States.

(8) "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

(A) separately stated charges for insurance;

(B) charges for damages to the motor vehicle occurring during the rental agreement period;

(C) separately stated charges for motor fuel sold by the owner of the motor vehicle; or

(D) discounts.

(9) "Owner of a motor vehicle" means:

(A) a person named in the certificate of title as the owner of the vehicle; or

(B) a person who has the exclusive use of a motor vehicle by reason of a rental and holds the vehicle for re-rental.

(10) "Orthopedically handicapped person" means a person who because of a physical impairment is unable to operate a motor vehicle that has not been specially modified.

(11) "Volunteer fire department" means a company, department, or association whose members receive no or nominal compensation and which is organized for the purpose of answering fire alarms and extinguishing fires or answering fire alarms, extinguishing fires, and providing emergency medical services.

(12) "Motor vehicle used for religious purposes" means a motor vehicle that is:

(A) designed to carry more than six passengers;

(B) sold to, rented to, or used by a church or religious society;

(C) used primarily for the purpose of providing transportation to and from a church or religious service or meeting: and

(D) not registered as a passenger vehicle and not used primarily for the personal or official needs or duties of a minister.

(Title 122A, Arts. 6.03 (part); 6.09(2) (part); 6.09(3)(c), as added by Acts 65th Legis., Reg.Sess., Ch. 417; 6.09(3) (part), as added by Acts 65th Legis., Reg.Sess., Ch. 375.)

Sec. 152.002. Total Consideration

(a) "Total consideration" means the amount paid or to be paid for a motor vehicle and its accessories attached on or before the sale, without deducting:

(1) the cost of the motor vehicle;

(2) the cost of material, labor or service, interest paid, loss, or any other expense;

(3) the cost of transportation of the motor vehicle before its sale; or

(4) the amount of manufacturers' or importers' excise tax imposed on the motor vehicle by the United States.

(b) "Total consideration" does not include:

(1) a cash discount;

(2) a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller;

(3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(4) a financing, carrying, or service charge or interest on credit extended on a motor vehicle sold under a conditional sale or other deferred payment contract;

(5) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle; or

(6) a charge for transportation of the motor vehicle after a sale.

(c) A person who is in the business of selling, renting, or leasing motor vehicles, who obtains the certificate of title to a motor vehicle, and who uses that motor vehicle for business or personal purposes may deduct its fair market value from the total consideration paid for a replacement vehicle if:

(1) the person obtains the certificate of title to the replacement motor vehicle;

(2) the person uses the replacement motor vehicle for business or personal purposes; and

(3) the replaced motor vehicle is offered for sale. (Title 122A, Art. 6.03(D).)

Sec. 152.003. Duties of Comptroller

(a) The comptroller may:

(1) supervise the collection of taxes imposed by this chapter; and

(2) establish rules for the determination of taxable value of motor vehicles and the administration of this chapter.

(b) The comptroller shall furnish a copy of the rules to each county tax assessor-collector.

(c) All county tax assessors-collectors shall consistently apply the rules authorized by this section to the determination of taxable value of each motor vehicle purchased in the state or taxable under the use tax levied by this chapter. (Title 122A, Art. 6.02.)

[Sections 152.004–152.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION OF TAX

Sec. 152.021. Retail Sales Tax

(a) A tax is imposed on every retail sale of every motor vehicle sold in this state. The tax is an obligation of and shall be paid by the purchaser of the motor vehicle.

(b) The tax rate is four percent of the total consideration. (Title 122A, Art. 6.01(1).)

Sec. 152.022. Tax on Motor Vehicle Purchased Outside This State

(a) A use tax is imposed on a motor vehicle purchased at retail sale outside this state and used on the public highways of this state by a Texas resident or other person who is domiciled or doing business in this state.

(b) The tax rate is four percent of the total consideration. (Title 122A, Art. 6.01(2).)

Sec. 152.023. Tax on Motor Vehicle Brought Into State by New Texas Resident

(a) A use tax is imposed on a new resident of this state who brings into this state a motor vehicle that has been registered previously in the new resident's name in any other state or foreign country.

(b) The tax is $15 for each vehicle.

(c) The tax imposed by this section is in lieu of the tax imposed by Section 152.022 of this code. (Title 122A, Art. 6.01(3).)

Sec. 152.024. Tax on an Even Exchange of Motor Vehicles

(a) A tax is imposed on each party to a transaction involving the even exchange of two motor vehicles.

(b) The tax on each party is $5.

(c) No transfer of title in an even exchange shall be accomplished until the taxes have been paid. (Title 122A, Arts. 6.01(4), 6.05(1) (part).)

Sec. 152.025. Tax on Gift of Motor Vehicle

(a) A tax is imposed on the recipient of a gift of a motor vehicle.

(b) The tax is $10. (Title 122A, Art. 6.01(5).)

Sec. 152.026. Tax on Gross Rental Receipts

(a) A tax is imposed on the gross rental receipts from the rental of a rented motor vehicle.

(b) The tax rate is four percent of the gross rental receipts.

(c) Except for a destroyed motor vehicle or an unrecovered stolen motor vehicle, the total amount of gross rental receipts tax paid by the owner, as defined by Section 152.001(9)(A) of this code, on a motor vehicle registered under Section 152.061 of this code may not be less than an amount equal to the tax that would be imposed by Section 152.021 or 152.022 of this code but for Subsection (d) of this section.

(d) The taxes imposed by Sections 152.021 and 152.022 of this code are not due on a motor vehicle as long as it is registered as a rental vehicle under Section 152.061 of this code. (Title 122A, Art. 6.01(6).)

Sec. 152.027. Tax on Metal Dealer Plates

(a) A use tax is imposed on each person to whom is issued a metal dealer's plate authorized by Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

(b) The tax is $20 for each plate issued.

(c) The tax imposed by this section is in lieu of any other tax imposed by this chapter. (Title 122A, Art. 6.01(7) (part).)

[Sections 152.028–152.040 reserved for expansion]

SUBCHAPTER C. COLLECTION OF TAXES

Sec. 152.041. General Collection Procedure

(a) The tax assessor-collector of the county in which an application for registration or for a Texas certificate of title is made shall collect taxes imposed by this chapter unless another person is required by this chapter to collect the taxes.

(b) The tax assessor-collector may not accept an application unless the tax is paid. (Title 122A, Art. 6.04(1).)

Sec. 152.042. Collection of Tax on Metal Dealer Plates

A person required to pay the tax imposed by Section 152.027 of this code shall pay the tax to the State Department of Highways and Public

Transportation, and the department may not issue the metal dealer's plates until the tax is paid. (Title 122A, Art. 6.01(7) (part).)

Sec. 152.043. Collection of Tax on Motor Vehicles Operated by Nonresidents

A person doing business in this state who registers a motor vehicle under Section 14, Chapter 110, Acts of the 47th Legislature, Regular Session, 1941 (Article 6675a—16, Vernon's Texas Civil Statutes), shall pay the tax imposed by Section 152.022 of this code to the comptroller on or before the day the motor vehicle is brought into Texas. (Title 122A, Art. 6.04(2).)

Sec. 152.044. Payment by Seller

If the comptroller on an audit of the records of a seller finds that the amount of tax due was incorrectly reported on a joint affidavit and that the amount of tax paid was less than the amount due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the vehicle, the seller is liable for the amount of the tax determined to be due. (Title 122A, Art. 6.06(1) (part).)

Sec. 152.045. Collection of Tax on Gross Rental Receipts

(a) An owner of a motor vehicle subject to the tax on gross rental receipts shall report and pay the tax to the comptroller in the same manner as the Limited Sales, Excise and Use Tax is reported and paid by retailers under Chapter 151 of this code.

(b) The owner shall add the tax to the rental charge, and when added, the tax is:

(1) a part of the rental charge;

(2) a debt owed to the motor vehicle owner by the person renting the vehicle; and

(3) recoverable at law in the same manner as the rental charge.

(c) The comptroller may proceed against a person renting a motor vehicle for any unpaid gross rental receipts tax. (Title 122A, Arts. 6.04(3) (part), (4).)

Sec. 152.046. Change in Tax Status of Motor Vehicle

(a) If the owner, as defined by Section 152.001(9)(A) of this code, of a motor vehicle registered as a rental vehicle ceases to use the vehicle for rental, the owner shall report and remit on the next report required to be filed with the comptroller by Section 152.045(a) of this code any unpaid portion of gross rental receipts tax imposed by Section 152.026 of this code.

(b) An owner of a motor vehicle on which the motor vehicle sales or use tax has been paid who subsequently uses the vehicle for rental shall collect the gross rental receipts tax imposed by this chapter from the person renting the vehicle. The owner may credit an amount equal to the motor vehicle sales or use tax paid by the owner to the comptroller against the amount of gross rental receipts due. This credit is not transferable and cannot be applied against tax due and payable from the rental of another vehicle belonging to the same owner.

(c) For the purpose of determining the amount of minimum tax due under Section 152.026(c) of this code only, an owner of a motor vehicle on which the tax on gross rental receipts is imposed may credit against the amount of gross rental receipts due an amount equal to the tax on gross rental receipts the owner has paid to any other state. This credit

is not transferable and cannot be applied against tax due and payable from the rental of another vehicle belonging to the same owner. (Title 122A, Arts. 6.04(5), (6), (7).)

[Sections 152.047–152.060 reserved for expansion]

SUBCHAPTER D. TAX ENFORCEMENT PROCEDURES

Sec. 152.061. Registration of Motor Vehicle Purchased for Rental

(a) An owner of a motor vehicle purchased for rental may furnish the county tax assessor-collector a rental certificate in lieu of the motor vehicle sales or use tax imposed by Sections 152.021 and 152.022 of this code. The county tax assessor-collector shall accept the motor vehicle for registration and issue a receipt for the license and title application.

(b) A rental certificate may be furnished by:

(1) a dealer licensed under Article 6686, Revised Civil Statutes of Texas, 1925, as amended; or

(2) the owner if the vehicle is for use in a rental business that rents at least five different motor vehicles within any 12-month period.

(c) The rental certificate shall be in a form designated by the comptroller and must contain:

(1) the name, address, and signature of the owner;

(2) the owner's or dealer's license number or a statement by the owner that the rental business of the owner meets the activity requirements of Subsection (b) of this section;

(3) the motor vehicle identification number; and

(4) the amount of total consideration for the motor vehicle and the amount of tax that would be due if the rental certificate had not been furnished. (Title 122A, Art. 6.041(1), (2), (3).)

Sec. 152.062. Required Affidavits

(a) The persons obligated by this chapter to pay taxes on the transaction shall file a joint affidavit with the tax assessor-collector of the county in which the application for registration and for a Texas certificate of title is made.

(b) The affidavit must be in the following form:

(1) if a motor vehicle is sold, the seller and purchaser shall make a joint affidavit stating the then value in dollars of the total consideration for the vehicle; or

(2) if the ownership of a motor vehicle is transferred as the result of a gift or even exchange, the principal parties shall make a joint affidavit stating the nature of the transaction.

(c) If a party to a sale, 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.

(d) The tax assessor-collector shall keep a copy of each affidavit until it is called for by the comptroller for auditing. (Title 122A, Art. 6.05(1) (part).)

Sec. 152.063. Records

(a) The seller of a motor vehicle shall keep at his principal office for at least four years from the date of the sale a complete record of each retail sale of a motor vehicle. The record must include a copy of the invoice of each vehicle sold. The invoice copy must show the full price of the motor vehicle and the itemized price of all its accessories. All sales

and supporting records of a seller are open to inspection and audit by the comptroller.

(b) The owner of a motor vehicle used for rental purposes shall keep for four years after purchase of a motor vehicle records and supporting documents containing the following information on the amount of:

(1) total consideration for the motor vehicle;

(2) motor vehicle sales or use tax paid on the motor vehicle;

(3) gross rental receipts received from the rental of the motor vehicle; and

(4) gross rental receipts tax paid to the comptroller on each motor vehicle used for rental purposes by the owner.

(c) No mileage records are required. (Title 122A, Arts. 6.05(2), (3).)

Sec. 152.064. Tax Receipts

(a) The comptroller shall prescribe the form of a tax receipt to be issued to a person paying a tax imposed by this chapter.

(b) The tax assessor-collector of each county shall:

(1) issue the original receipt to the person paying a tax imposed by this chapter;

(2) send a duplicate copy of the receipt to the comptroller at the same time and along with the amount of the tax collections required to be sent under Section 152.121 of this code; and

(3) retain one duplicate copy of the receipt as a permanent record of the transaction. (Title 122A, Art. 6.07 (part).)

Sec. 152.065. Registration as a Retailer; Permit

A motor vehicle owner required to collect, report, and pay a tax on gross rental receipts imposed by this chapter shall register as a retailer with the comptroller in the same manner as is required of a retailer under Subchapter F of Chapter 151 of this code. The owner shall also obtain from the comptroller a motor vehicle retailer's permit. (Title 122A, Art. 6.04(3) (part).)

Sec. 152.066. Deficiency Determination; Penalty and Interest

(a) The comptroller shall give written notice to the seller of a motor vehicle of a deficiency determination made under Section 152.044 of this code.

(b) Before the expiration of 10 days after the day a notice of a deficiency determination is received, the seller shall pay to the comptroller the amount of tax due, a penalty of 10 percent of the amount of the tax due, and interest, if any is accrued. The interest rate on the amount of tax due under this section is 10 percent a year.

(c) Interest begins to accrue on unpaid taxes 60 days after the day on which the joint affidavit was executed. (Title 122A, Art. 6.06(1) (part).)

Sec. 152.067. Petition for Redetermination of a Deficiency

(a) The comptroller shall:

(1) promulgate rules under which the seller may petition for a redetermination of deficiency; and

(2) grant an oral hearing to any seller who requests a hearing.

(b) The comptroller may increase or decrease the determination of deficiency before it becomes final, but the amount may be increased only if the comptroller asserts a claim for the increase at or before the oral hearing.

(c) If the comptroller asserts a claim for an increase in the determination, the seller is entitled to a 30-day continuance of the hearing in or-

der to obtain other evidence relating to the items on which the increase is based. (Title 122A, Art. 6.06(1) (part).)

Sec. 152.068. Revocation of Motor Vehicle Retail Seller's Permit

(a) The comptroller may revoke or suspend any one or more of the motor vehicle retailer's permits held by a person if that person fails to comply with a provision of this chapter or with a rule of the comptroller relating to a tax imposed by this chapter.

(b) Before revoking or suspending the permit, the comptroller must provide the permit holder with a hearing. The permit holder must be given at least 20 days' notice specifying the time and place of hearing and requiring that the permit holder show cause why the permit or permits should not be revoked or suspended.

(c) The comptroller shall give the person notice of the suspension or revocation of any permit.

(d) Notice required by this section must be written and may be served either personally or by mail.

(e) The comptroller may not issue a new permit after the revocation of a permit unless satisfied that the former permit holder will comply with the provisions of this chapter and the rules of the comptroller. The comptroller may prescribe the terms under which a suspended permit may be reissued.

(f) The permit holder or person whose permit is revoked may appeal the comptroller's action in the same manner as a final deficiency determination may be appealed. (Title 122A, Art. 6.042.)

[Sections 152.069–152.080 reserved for expansion]

SUBCHAPTER E. EXEMPTIONS

Sec. 152.081. Driver Training Motor Vehicles

The taxes imposed by this chapter do not apply to the sale or use of a motor vehicle that is:

(1) owned by a motor vehicle dealer as defined by Article 6686(a), Revised Civil Statutes of Texas, 1925, as amended;

(2) purchased in this state; and

(3) loaned free of charge by the dealer to a public school for use in an approved standard driver training course. (Title 122A, Art. 6.-09(1).)

Sec. 152.082. Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency

The taxes imposed by this chapter do not apply to the sale of a motor vehicle to or use of a motor vehicle by a public agency if the motor vehicle is operated with an exempt license plate issued under Section 3–AA, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a—3aa, Vernon's Texas Civil Statutes). (Title 122A, Art. 6.09(3), as added by Acts 65th Legis., Reg.Sess., Ch. 233.)

Sec. 152.083. Lease of Motor Vehicle to Public Agency

(a) The taxes imposed by this chapter do not apply to the purchase of a motor vehicle that is to be leased to a public agency.

(b) This exemption applies only if the person purchasing the motor vehicle to be leased presents the tax assessor-collector a form prescribed and provided by the comptroller and showing:

(1) the identification of the motor vehicle;

(2) the name and address of the lessor and the lessee; and

(3) verification by an officer of the public agency to which the motor vehicle will be leased that the agency will operate the vehicle with an exempt license plate issued under Section 3-AA, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a—3aa, Vernon's Texas Civil Statutes).

(c) If a motor vehicle for which the tax has not been paid ceases to be leased to a public agency, the owner shall notify the comptroller on a form provided by the comptroller and shall pay the sales or use tax on the motor vehicle based on the owner's book value of the motor vehicle. The tax is imposed at the same rate that is provided by Section 152.-021(b) of this code. (Title 122A, Art. 6.01(8) (part).)

Sec. 152.084. Rental of Motor Vehicle to Public Agency

The taxes imposed by this chapter do not apply to the rental of a motor vehicle to a public agency. The tax which would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts tax imposed by Section 152.026 of this code. (Title 122A, Art. 6.-09(4).)

Sec. 152.085. Rental of Motor Vehicle for Purposes of Re-Rental

(a) The taxes imposed by this chapter on the gross rental receipts from the rental of a motor vehicle do not apply to the rental of a motor vehicle for the purpose of re-rental.

(b) The minimum gross rental receipts tax imposed by Section 152.026 of this code remains the obligation of the owner as defined by Section 152.001(9)(A) of this code. The owner may credit all gross rental receipts taxes paid to the comptroller on the re-rental of a motor vehicle registered under Section 152.061 of this code for the purpose of calculating the amount of minimum gross rental receipts tax due.

(c) A person authorized by Section 152.061 of this code to register motor vehicles for rental may issue an exemption certificate to the owner of the motor vehicle. An owner who takes the certificate in good faith is relieved of the burden of proving that the motor vehicle was rented for purposes of re-rental. (Title 122A, Art. 6.09(5).)

Sec. 152.086. Motor Vehicles Driven by Handicapped Persons

(a) The taxes imposed by this chapter do not apply to the sale or use of a motor vehicle that is driven primarily by an orthopedically handicapped person.

(b) The comptroller shall promulgate rules to ensure that motor vehicles exempted from taxation by this section are used primarily by orthopedically handicapped persons. The comptroller may require any individual seeking exemption under this section to present information establishing qualification for the exemption.

(c) This exemption does not apply to any vehicle owned or operated by any corporation, partnership, limited partnership, or association. (Title 122A, Arts. 6.09(3)(a), (b), as added by Acts 65th Legis., Reg. Sess., Ch. 417.)

Sec. 152.087. Fire Trucks and Ambulances

The taxes imposed by this chapter do not apply to the purchase, rental, or use of a fire truck, ambulance, or other motor vehicle used exclusively for fire-fighting purposes or for emergency medical services when purchased by a volunteer fire department. (Title 122A, Art. 6.09(2) (part).)

Sec. 152.088. Motor Vehicles Used for Religious Purposes

The taxes imposed by this chapter do not apply to the sale or use of or the receipts from the rental of a motor vehicle that is used for religious purposes. (Title 122A, Art. 6.09(3) (part), as added by Acts 65th Legis., Reg. Sess., Ch. 375.)

[Sections 152.089–152.100 reserved for expansion]

SUBCHAPTER F. PENALTIES

Sec. 152.101. Penalty for Signing False Affidavit

(a) A person commits an offense if the person signs a joint affidavit required by Section 152.062 of this code and knows that it is false in any material fact.

(b) An offense under this section is a felony punishable by imprisonment for not less than two nor more than five years or a fine of not more than $1,000. or both. (Title 122A, Art. 6.05(1)(part).)

Sec. 152.102. Operation Without Payment of Tax

(a) A person commits an offense if the person knowingly operates a motor vehicle on a highway of this state without paying the tax imposed by this chapter on the vehicle.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $10 nor more than $500 or confinement in the county jail for not less than one day nor more than 30 days, or both. (Title 122A, Art. 6.08.)

Sec. 152.103. Failure to Keep Records

(a) A seller commits an offense if he fails to make and retain complete records for the period of four years as provided by Section 152.-063(a) of this code.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 nor more than $500. (Title 122A, Art. 6.06(2).)

[Sections 152.104–152.120 reserved for expansion]

SUBCHAPTER G. DISPOSITION OF TAXES

Sec. 152.121. Amount of Tax Sent to Comptroller

(a) On the 10th day of each month, the county tax assessor-collector shall send 95 percent of the money collected from taxes imposed by this chapter to the comptroller.

(b) The county tax assessor-collector shall retain five percent of the taxes collected under this chapter as fees of office or to be paid into the officers' salary fund of the county as provided by general law.

(c) Taxes on metal dealer plates collected by the State Department of Highways and Public Transportation shall be deposited by the department in the state treasury in the same manner as are other taxes collected under this chapter. (Title 122A, Arts. 6.07 (part); 6.01(7) (part).)

Sec. 152.122. Allocation of Tax

The comptroller shall deposit one-fourth of the funds received under Section 152.121 of this code to the credit of the available school fund and the remaining three-fourths to the credit of the tax clearance fund. (New.)

CHAPTER 153. MOTOR FUEL TAXES

SUBCHAPTER A. GENERAL PROVISIONS

Section
153.001. Definitions
153.002. Tax Liability on Leased Vehicles
153.003. Carrier Records
153.004. Motor Fuel Transportation: Required Documents
153.005. Redetermination of Tax Liability
153.006. Cancellation or Refusal of Permit
153.007. Enforcement of Permit Cancellation or Refusal
153.008. Inspection of Premises and Records
153.009. Calibration of Cargo Tanks and Containers
153.010. Authority to Stop and Examine
153.011. Impoundment and Seizure
153.012. Sale of Seized Property
153.013. Presumptions
153.014. Venue of Tax Collection Suits
153.015. Other Motor Fuel Taxes Prohibited

[Sections 153.016–153.100 reserved for expansion]

SUBCHAPTER B. GASOLINE TAX

153.101. Gasoline Tax Imposed
153.102. Tax Rates
153.103. Computation of Tax
153.104. Exceptions
153.105. Collection of Tax; Allowances
153.106. Permits: Application
153.107. Distributor's Permit
153.108. Interstate Trucker's Permit
153.109. Trip Permits
153.110. Aviation Fuel Dealer's Permit
153.111. Distributor May Perform Other Functions
153.112. Permits: Periods of Validity
153.113. Display of Permit
153.114. List of Distributors and Aviation Fuel Dealers
153.115. Tax Payments by an Interstate Trucker; Allowance
153.116. Bonds and Other Security for Taxes
153.117. Records
153.118. Reports and Payments
153.119. Refunds of Taxes Paid on Excepted Uses of Gasoline
153.120. Claims for Refunds
153.121. When Gasoline Tax Refund May be Filed
153.122. Gasoline Tax Refund Payment and Filing Fee

[Sections 153.123–153.200 reserved for expansion]

SUBCHAPTER C. DIESEL FUEL TAX

Section
153.201. Diesel Fuel Tax Imposed
153.202. Tax Rates
153.203. Exceptions
153.204. Computation of Tax
153.205. Statement for Purchase of Diesel Fuel Tax Free
153.206. Collection and Payment of Tax; Allowances
153.207. Permits; Application
153.208. Bonded Supplier's Permit
153.209. Bonded User Permit
153.210. Diesel Tax Prepaid User Permit
153.211. Interstate Trucker's Permit
153.212. Trip Permits
153.213. Aviation Fuel Dealer's Permit
153.214. Supplier May Perform Other Functions
153.215. Permits: Periods of Validity
153.216. Display of Permit
153.217. List of Suppliers, Bonded Users, and Aviation Fuel Dealers
153.218. Bonds and Other Security for Taxes
153.219. Records
153.220. Invoices
153.221. Reports and Payments
153.222. Refunds of Taxes Paid on Excepted Uses of Diesel Fuel
153.223. Claims for Refunds
153.224. When Diesel Fuel Tax Refund May be Filed
153.225. Diesel Fuel Tax Refund Payments and Filing Fee

[Sections 153.226–153.300 reserved for expansion]

SUBCHAPTER D. LIQUEFIED GAS TAX

153.301. Tax Imposed; Rate
153.302. Payment of Tax
153.303. Permits; Application; Display
153.304. Bonded Dealer's Permit
153.305. Liquefied Gas Tax Decal Permit
153.306. Interstate Trucker's Permit
153.307. Permits: Periods of Validity
153.308. Security for Payment of Tax
153.309. Computation of Taxes; Allowances
153.310. Records
153.311. Reports and Payments
153.312. Refunds; Transfer of Decals

[Sections 153.313–153.400 reserved for expansion]

SUBCHAPTER E. PENALTIES AND OFFENSES

153.401. Failure to Pay Tax or Report
153.402. Prohibited Acts; Civil Penalties
153.403. Criminal Offenses
153.404. Criminal Offenses: Special Provisions and Exceptions
153.405. Criminal Penalties
153.406. Criminal Penalties: Corporations and Associations
153.407. Venue of Criminal Prosecutions

[Sections 153.408–153.500 reserved for expansion]

SUBCHAPTER F. ALLOCATION OF TAXES

Section
153.501. Tax Administration Fund
153.502. Allocation of Unclaimed Refundable Gasoline Taxes
153.503. Allocation of Gasoline Tax
153.504. Allocation of Diesel Fuel Tax
153.505. Allocation of Liquefied Gas Tax

CHAPTER 153. MOTOR FUEL TAXES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.001. Definitions

In this chapter:

(1) "Aviation fuel dealer" means a person who:

(A) is the operator of an aircraft servicing facility;

(B) delivers gasoline or diesel fuel exclusively into the fuel supply tanks of aircraft or into equipment used solely for servicing aircraft and used exclusively off-highway; and

(C) does not use, sell, or distribute gasoline or diesel fuel on which a fuel tax is required to be collected or paid to this state.

(2) "Cargo tank" means an assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, automobile, truck, trailer, or wheels, and includes accessory piping, valves, and meters, but does not include a fuel supply tank connected to the carburetor or fuel injector of a motor vehicle.

(3) "Dealer" means a person who is the operator of a service station or other retail outlet and who delivers motor fuel into the fuel supply tanks of motor vehicles or motorboats.

(4) "Diesel fuel" means kerosene or another liquid suitable for the propulsion of diesel-powered motor vehicles, but does not include gasoline or liquefied gas.

(5) "Diesel bulk delivery" means a delivery of a quantity of diesel fuel in excess of five gallons, but does not include a delivery into the fuel supply tanks of a motor vehicle.

(6) "Diesel tax prepaid user" means a person:

(A) whose purchases of diesel fuel are predominantly for nonhighway use;

(B) whose only diesel-powered motor vehicles are passenger cars or light trucks; and

(C) who elects to prepay an annual diesel fuel tax to the comptroller on each diesel-powered motor vehicle.

(7) "Diesel user" means a person who delivers, or causes to be delivered, diesel fuel into the fuel supply tanks of motor vehicles owned or operated by him.

(8) "Distributor" means a person who:

(A) regularly makes sales or distributions of gasoline that are not into the fuel supply tanks of motor vehicles, motorboats, or aircraft;

(B) refines, distills, manufactures, produces, or blends for sale or distribution tax-free gasoline in this state;

(C) imports or exports tax-free gasoline other than in the fuel supply tanks of motor vehicles; or

(D) in any other manner acquires or possesses tax-free gasoline.

(9) "Gasoline" means a liquid offered for sale, sold, or used as the fuel for a gasoline-powered engine, but does not include diesel fuel or liquefied gas.

(10) "Gasoline or diesel bulk user" means a person who purchases tax-paid gasoline or diesel fuel in quantities of 2,500 or more gallons at each delivery into storage facilities maintained by him primarily for delivery of the gasoline or diesel fuel into fuel supply tanks of motor vehicles or motorboats owned or operated by him.

(11) "Interstate trucker" means a person who imports motor fuel in the fuel supply tanks of a motor vehicle having an aggregate fuel tank capacity of 42 or more gallons, operated for commercial purposes, for taxable use on the public highways of this state, but who does not sell or distribute motor fuel to other persons within this state, except as provided in Subchapter D of this chapter.

(12) "Lessor" means a person:

(A) whose principal business is the leasing or renting of motor vehicles for compensation to the general public;

(B) who maintains established places of business; and

(C) whose lease or rental contracts require the motor vehicles to be returned to the established places of business at the termination of the lease.

(13) "Light truck" means a pickup truck, panel delivery truck, carryall truck, or other motor vehicle that is designed, used, or maintained primarily for the transportation of property and that has a manufacturer's rated carrying capacity not exceeding 2,000 pounds.

(14) "Liquefied gas" means all combustible gases that exist in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, but does not include gasoline or diesel fuel.

(15) "Liquefied gas tax decal user" means a person who owns or operates on the public highways of this state a motor vehicle:

(A) equipped with a liquefied gas carburetion system;

(B) required to be licensed by the State Department of Highways and Public Transportation; and

(C) required to have a Texas certificate of inspection.

(16) "Motorboat" means a vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(17) "Motor fuel" includes gasoline, diesel fuel, liquefied gas, and other products that are usable as propellants of a motor vehicle.

(18) "Motor vehicle" means a self-propelled vehicle licensed for highway use or used on the highway.

(19) "Passenger car" means a motor vehicle designed for carrying 10 or fewer passengers and used for the transportation of persons.

(20) "Public highway" means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

(21) "Registered gross weight" or "RGW" means the total weight of the vehicle and carrying capacity shown on the registration certificate issued by the State Department of Highways and Public Transportation.

(22) "Sale" means a transfer of title, exchange, or barter of motor fuel, but does not include transfer of possession of motor fuel on consignment.

(23) "Supplier" means a person who:

(A) refines, distills, manufactures, produces, or blends for sale or distribution diesel fuel in this state;

(B) imports or exports diesel fuel other than in the fuel supply tanks of motor vehicles;

(C) sells or delivers diesel duel in bulk quantities to dealers, users, aviation fuel dealers, or other suppliers; or

(D) is engaged in the business of selling or delivering diesel fuel in bulk quantities to consumers for nonhighway uses.

(24) "Transit company" means a business that:

(A) transports in a political subdivision persons in carriers designed for 12 or more passengers;

(B) holds a franchise from a political subdivision; and

(C) has its rates regulated by the subdivision or is owned or operated by the political subdivision.

(25) "Wholesaler" or "jobber" means a person who purchases tax-paid gasoline for resale or distribution at wholesale. (Title 122A, Art. 9.001 (part).)

Sec. 153.002. Tax Liability on Leased Vehicles

(a) A user or interstate trucker is liable for the tax on motor fuel imported into this state in fuel supply tanks of motor vehicles leased to him and used on the Texas highways to the same extent and in the same manner as motor fuel imported in his own motor vehicles and used on the public highways of Texas, unless the lessor is liable under Subsection (b) of this section.

(b) A lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns to carriers or other lessees for interstate operation may be deemed to be the user or interstate trucker when he supplies or pays for the motor fuel consumed in those vehicles, and the lessor may be issued a permit as an interstate trucker when an application and bond have been properly filed with and approved by the comptroller.

(c) A lessee may exclude motor vehicles that he leases from his reports and liabilities under this chapter, but only if the motor vehicles in question have been leased from a lessor holding a valid permit as a bonded interstate trucker for the calendar year.

(d) A lessor described in Subsection (b) of this section must file with his application for an interstate trucker permit one copy of the form-lease or service contract he enters into with the various lessees of his motor vehicles. When the interstate trucker permit has been secured, the lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy of the permit to be carried in the cab compartment of the motor vehicle. The photocopy of the permit must have typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. The lessor is responsible for the proper use of the photocopy of the permit issued and for its return to him with the motor vehicle to which it is assigned. (Title 122A, Art. 9.002.)

Sec. 153.003. Carrier Records

(a) All common and contract carriers operating in this state shall keep for four years, open to inspection by the comptroller, a complete and

separate record of each intrastate and interstate transportation of motor fuel.

(b) The record must show:

(1) the date of transportation;

(2) the name of the consignor and consignee;

(3) the means of transportation; and

(4) the quantity and kind of motor fuel transported.

(c) The record must also include:

(1) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and

(2) 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 which has been diverted. (Title 122A, Art. 9.003.)

Sec. 153.004. Motor Fuel Transportation: Required Documents

(a) Except as provided by Subsection (c) of this section, a person who transports motor fuel, regardless of whether or not a tax is due on the motor fuel under this chapter, shall record the shipment of the cargo on a cargo manifest containing such information as may be required by the comptroller.

(b) The cargo manifest shall be carried with the motor fuel until the motor fuel is resold or removed from the cargo tank.

(c) This section does not apply to a pipeline operating as a common carrier or to the transporting of motor fuel in the fuel supply tanks of motor vehicles. A cargo manifest is not required for any motor fuel being transported by a person in his own cargo tanks for his own use and not for resale. (Title 122A, Art. 9.004.)

Sec. 153.005. Redetermination of Tax Liability

(a) A person against whom a determination for any tax, penalty, or interest is made under this chapter may petition for a redetermination within 30 days after service of the notice of the determination.

(b) If a petition for redetermination is filed within the 30-day period, the comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 20 days' notice of the time and place of the hearing. The notice may be served personally or by mail. If the notice is served by mail, it shall be addressed to the permittee at his address as it appears in the records of the comptroller.

(c) In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(d) An order or decision of the comptroller on a petition for redetermination becomes final 30 days after service on the petitioner of notice of the order or decision. (Title 122A, Art. 9.005.)

Sec. 153.006. Cancellation or Refusal of Permit

(a) The comptroller may cancel or refuse to issue or reissue a motor fuel permit to any person who has violated or has failed to comply with a provision of this chapter or a rule of the comptroller.

(b) Before a permit may be canceled, or the issuance or reissuance refused, the comptroller shall give the permittee or permit applicant not less than 10 days' notice of a hearing at the office of the comptroller, in Austin, Texas, or at a specified comptroller's field office, granting the

permittee or applicant an opportunity to show cause before the comptroller why the proposed action should not be taken. If a permit is in effect, the permit remains in force pending the determination of the show-cause hearing. Notice must be in writing and may be mailed by United States registered mail or certified mail to the permittee or applicant at his last known address, or may be delivered by the comptroller to the permittee or applicant, and no other notice is necessary. In case of service by mail of a notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(c) The comptroller may prescribe rules of procedure and evidence for the hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

(d) If, after the hearing or the opportunity to be heard, the permit is canceled or the issuance or reissuance refused by the comptroller, all taxes that have been collected or that have accrued, although the taxes are not then due and payable to the state, except by the provisions of this chapter, shall become due and payable concurrently with the notice of cancellation of the permit. The permittee shall within five days make a report covering the period of time not covered by preceding reports filed by the permittee and ending with the date of cancellation, and shall remit and pay to the comptroller all taxes that have been collected and that have accrued from the sale, use, or distribution of motor fuel in this state. (Title 122A, Arts. 9.006(1), (2), (3), (4).)

Sec. 153.007. Enforcement of Permit Cancellation or Refusal

(a) The comptroller may examine any books and records incident to the conduct of the business of a person whose permit has been canceled on the person's failure to file the reports required by this chapter or to remit all taxes due. The comptroller shall issue an audit deficiency determination of the amount of delinquent taxes, penalties, and interest, containing a demand for payment. The deficiency determination shall provide that if neither a payment is made nor a request for a redetermination is filed within 30 days after the date of the notice of the deficiency, the amount of the determination becomes due and payable. If the amount is not paid on or before the 44th day after service of the notice of the deficiency determination, the bond or other security required under this chapter shall be forfeited. The demand for payment shall be addressed to both the surety or sureties and the person who owes the delinquency.

(b) If the forfeiture of the bond or other security does not satisfy the delinquency, the comptroller shall certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against the person or his surety or both to collect the amount due. After being given notice of an order of cancellation, it shall be unlawful for any person to continue to operate his business under a canceled permit. The attorney general may file suit to enjoin the person from continuing to operate under his permit until the person's permit is reissued by the comptroller.

(c) An appeal from an order of the comptroller canceling or refusing the issuance or reissuance of a permit may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits, except that:

(1) an appeal must be perfected and filed within 30 days after the effective date of the order, decision, or ruling of the comptroller;

(2) the proceeding shall have precedence over all other causes of a different nature;

(3) the trial of the case shall begin within 10 days after its filing; and

(4) the order, decision, or ruling of the comptroller may be suspended or modified by the court pending a trial on the merits. (Title 122A, Arts. 9.006(5), (6), (7).)

Sec. 153.008. Inspection of Premises and Records

For the purpose of determining the amount of tax collected and payable to the state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, the comptroller may:

(1) inspect any premises where motor fuel; crude petroleum; natural gas; derivatives or condensates of crude petroleum, natural gas, or their products; methyl alcohol; ethyl alcohol; or other blending agents are produced, made, prepared, stored, transported, sold, or offered for sale or exchange;

(2) examine the books and records required to be kept and records incident to the business of any distributor, supplier, dealer, or any person receiving or possessing, delivering, or selling motor fuel, crude oil, derivatives or condensates of crude petroleum, natural gas, or their products, or any blending agents;

(3) examine and either gauge or measure the contents of all storage tanks, containers, and other property or equipment; and

(4) take samples of any and all of these products stored on the premises. (Title 122A, Art. 9.007.)

Sec. 153.009. Calibration of Cargo Tanks and Containers

(a) Before initially transporting gasoline or diesel fuel for sale or distribution, a person shall have the cargo tanks or other containers used for transporting gasoline or diesel fuel tested, measured, and calibrated by the comptroller, an authorized representative of another state, or a commercial calibration company that meets the calibration standards approved by the comptroller. The person shall obtain a measurement certificate showing the capacity by liquid volume for each cargo tank or container and its compartments before transporting gasoline or diesel fuel.

(b) The owner of a cargo tank or container tested and measured by the comptroller may be required to pay to the state a reasonable fee for the water used to calibrate tank capacity.

(c) The measurement certificate or a duplicate measurement certificate shall be carried with the vehicle for which it was issued. The certificate number and the total capacities of each cargo tank must be marked on the rear of the vehicle. Compartment capacities must be marked on each compartment dome.

(d) Cargo tanks or containers that have been damaged, repaired, or modified in any way that might affect their capacity must be retested or remeasured before transporting gasoline or diesel fuel. The comptroller shall mark "out of order" on a cargo tank that is not in conformity with this section or with a rule promulgated under this section. (Title 122A, Art. 9.008.)

Sec. 153.010. Authority to Stop and Examine

In order to enforce the provisions of this chapter, the comptroller or a peace officer may stop a motor vehicle that appears to be operating with or transporting motor fuel in order to examine the cargo manifest or invoices required to be carried, examine a permit or copy of a permit that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to

determine whether the taxes have been paid or accounted for by a distributor, supplier, dealer, user, or any person required to be so permitted. (Title 122A, Art. 9.009.)

Sec. 153.011. Impoundment and Seizure

(a) If after examination or other investigation, it is found that the owner or operator of any motor vehicle or cargo tanks has not paid all motor fuel taxes due, or does not possess a valid permit as a distributor, supplier, user, dealer, or interstate trucker to use or transport motor fuel in motor vehicles operating on the public highways, the comptroller or peace officer may impound the motor vehicle or cargo tanks. Unless proof is produced within 72 hours after the beginning of impoundment that the owner or operator has paid the taxes and has paid all other taxes established by audit or investigation by the comptroller to be due on the motor fuel used or transported, or that the owner or operator holds a valid permit to use or transport motor fuel for such purposes, the motor vehicle or cargo tanks and cargo may be held until all taxes, penalties, and interest found to be due this state and all costs of impoundment have been paid, or until the owner or operator has filed a bond with the comptroller payable to the 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.

(b) If the owner or operator does not produce the required permit, pay the taxes, penalties, and interest due, or post the bond required, the comptroller may seize the impounded property.

(c) The comptroller may seize:

(1) all motor fuel on which taxes are imposed by this chapter that is found in the possession, custody, or control of any person for the purpose of being sold, transported, removed, or used by him in violation of this chapter;

(2) all motor fuel that is removed or is deposited, stored, or concealed in any place with intent to avoid payment of taxes;

(3) any automobile, truck, tank truck, boat, conveyance, or other vehicle used in the removal or transportation of the motor fuel to avoid payment of taxes; and

(4) all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for avoiding the payment of taxes and found in the place, building, or vehicle where the motor fuel is found.

(d) The comptroller, when making a seizure under this section, shall immediately make a written report showing the name of the agent or representative making the seizure, the place where or the person from whom the property was seized, an inventory of the property, and an appraisal at the usual and ordinary retail price of each article seized. The report shall be prepared in duplicate and signed by the agent or representative making the seizure. The original report shall be given to the person from whom the property is taken, and the duplicate shall be filed in the office of the comptroller and be open to public inspection. (Title 122A, Arts. 9.-010(1), (2), (3), (4).)

Sec. 153.012. Sale of Seized Property

(a) The comptroller may sell property seized under Section 153.011 of this code.

(b) Notice of the time and place of a sale shall be given to the delinquent person in writing by certified mail at least 20 days before the date set for the sale. The notice shall be enclosed in an envelope addressd to

the person at his last known address or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 14 days before the date set for the sale. The notice must contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or as much of it as may be necessary, will be sold at public auction in accordance with the law and the notice.

(c) At the sale, the comptroller shall sell the property and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(d) The proceeds of a sale shall be allocated according to the following priorities:

(1) the payment of expenses of seizure, appraisal, custody, advertising, auction, and any other expenses incident to the seizure and sale;

(2) the payment of the tax, penalty, and interest; and

(3) the repayment of the remaining balance to the person liable for the amount unless a claim is presented before the sale by any other person who has an ownership interest evidenced by a financing statement or lien, in which case the comptroller shall withhold the remaining balance pending a determination of the rights of the respective parties. (Title 122A, Arts. 9.010(5), (6), (7).)

Sec. 153.013. Presumptions

(a) A distributor, supplier, dealer, interstate trucker, or user who fails to keep a record, issue an invoice, or file a report required by this chapter, is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the distributor, supplier, dealer, interstate trucker, or user. Motor fuel unaccounted for is presumed to have been sold or used for taxable purposes. The comptroller may fix or establish the amount of taxes, penalties, and interest due the state from the records of deliveries or from any records or information available to him. If a tax claim, as developed from this procedure, is not paid, after the opportunity to request a redetermination, the claim and any audit made by the comptroller or any report filed by the distributor, supplier, dealer, interstate trucker, or user, are evidence in any suit or judicial proceedings filed by the attorney general, and are prima facie evidence of the correctness of the claim or audit. A prima facie presumption of the correctness of the claim may be overcome at the trial by evidence adduced by the distributor, supplier, dealer, interstate trucker, or user.

(b) In the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles traveled. An interstate trucker may produce evidence of motor fuel consumption to establish another mileage factor. If an examination or audit

made by the comptroller from the records of an interstate trucker shows that a greater amount of motor fuel was consumed than was reported by the interstate trucker for tax purposes, the interstate trucker is liable for the tax, penalties, and interest on the additional amount shown or he is entitled to a credit or refund on overpayments of tax established by the audit. (Title 122A, Art. 9.011.)

Sec. 153.014. Venue of Tax Collection Suits

The venue of a suit, injunction, or other proceeding at law available for the establishment or collection of a claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter is in Travis County or in any other county having venue under existing venue statutes. Title 122A, Art. 9.-013.)

Sec. 153.015. Other Motor Fuel Taxes Prohibited

The taxes imposed by this chapter are in lieu of any other excise or occupation tax imposed by a political subdivision of the state on the sale, use, or distribution of gasoline, diesel fuel, or liquefied gas. (Title 122A, Arts. 9.101(6), 9.201(6), 9.301(4).)

[Sections 153.016–153.100 reserved for expansion]

SUBCHAPTER B. GASOLINE TAX

Sec. 153.101. Gasoline Tax Imposed

A tax is imposed on the first sale or use of gasoline in this state. (Title 122A, Art. 9.101(1) (part).)

Sec. 153.102. Tax Rates

(a) The gasoline tax rate is five cents for each gross or volumetric gallon or fractional part sold or used in this state except as provided by Subsection (b) of this section.

(b) The gasoline tax rate for gasoline sold to a transit company for exclusive use in its transit carrier vehicles under an exemption certificate promulgated by the comptroller is four cents for each gallon. (Title 122A, Arts. 9.101(1) (part), (1)(F).)

Sec. 153.103. Computation of Tax

(a) The tax shall be computed and paid over to the state on the gross or volumetric gallons of taxable gasoline sold to wholesalers or jobbers, dealers, or bulk users, as shown by the authorized measurement certificate issued for the cargo tank making deliveries or as shown by any other measuring device approved by the comptroller.

(b) For a distributor whose gasoline deliveries are made to retail outlets that are operated by him or deliveries by him on consignment, the tax on sales to users and consumers shall be computed on the basis of actual sales.

(c) If the comptroller is not satisfied with a tax return or the amount of tax required to be paid to the state by any distributor who elects to report on the basis of actual sales, the comptroller may compute and determine the amount required to be paid on the basis of the beginning inventory, showing the total gallons of gasoline in storage at the location on the first day of the calendar month, plus the total gallons of gasoline delivered into the storage facility during the month, less the total gallons of gasoline in the storage facility at the end of the calendar month.

(d) This section does not prohibit volume correction of gasoline under accepted practices when sold or distributed to or between permitted dis-

tributors, but reports filed with the comptroller must show tax-paid purchases, taxable sales, and distributions in gross quantities. (Title 122A, Arts. 9.101(2), (3), (4), (5).)

Sec. 153.104. Exceptions

The tax imposed by this subchapter does not apply to gasoline:

(1) brought into this state in the fuel tank of a vehicle with a capacity of less than 42 gallons when the tank is connected to the carburetor or fuel injection system of the power plant providing the propulsion of the vehicle;

(2) delivered by a permitted distributor to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or a barge for export from this state if the gasoline is moved forthwith outside the state;

(3) sold by a permitted distributor to another permitted distributor;

(4) sold to the federal government for its exclusive use;

(5) delivered by a permitted distributor into a storage facility of a permitted aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment; or

(6) sold by one aviation fuel dealer to another aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. (Title 122A, Arts. 9.101(1)(A), (B), (C), (D), (E), (G).)

Sec. 153.105. Collection of Tax; Allowances

(a) A person who makes a sale or use of gasoline on which the tax has not been previously paid in this state for any purpose other than those excepted by Section 153.104 of this code shall at the time of sale or use collect the tax from the purchaser or recipient of gasoline in addition to the selling price and is also liable to the state for the taxes collected at the time and in the manner as provided by this chapter. A person is liable to the state for the tax at the applicable tax rate for each gallon of gasoline or fractional part thereof used or consumed by him in a taxable manner and shall report and pay the tax as provided by this chapter. In each subsequent sale of gasoline on which the tax has been collected, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the gasoline for the purpose of propelling a vehicle upon the public highways of this state.

(b) Gasoline is deemed to be used when it is delivered into a fuel supply tank.

(c) The tax on two percent of the taxable gallons of gasoline sold in this state is allocated to the persons selling, distributing, or handling gasoline in this state. The allocation or allowance shall be deducted by the distributors in the payment to the state of the taxes imposed by this chapter and shall be apportioned as follows:

(1) one percent to the distributor making the first taxable sale or use of the gasoline and paying the tax to the state for the expense of collecting, accounting for, reporting, and remitting the tax collected and for keeping records;

(2) one-half of one percent to wholesalers or jobbers who pay taxes to a distributor on gasoline purchased for resale to dealers or bulk users to cover loss by evaporation, temperature changes in the gasoline, and ordinary handling from the time the gasoline is ac-

quired tax-paid by wholesalers or jobbers until its sale or distribution and delivery to purchasers; and

(3) one-half of one percent to dealers or bulk users to cover losses by evaporation, temperature changes in gasoline, or other handling losses from the time the gasoline is delivered to the storage facilities of dealers or bulk users until it is sold or delivered into the fuel supply tanks of motor vehicles or motorboats, but if the consignor retains title to gasoline consigned to a dealer or bulk user until the gasoline is delivered into the fuel supply tanks of motor vehicles or motorboats, the consignor is entitled to the allowance or allocation.

(d) In the sale and distribution of gasoline in this state, if a person performs more than one of the functions or activities of distributor, wholesaler or jobber, dealer, or bulk user, he is entitled to the apportionment or allowance for each function or activity, but the aggregate allowance may not exceed the total amount of two percent.

(e) The intent and purpose of the allowance or allocation to wholesalers or jobbers, dealers, or bulk users is to reimburse fully those persons for losses sustained by them from evaporation, temperature changes, and ordinary handling of gasoline, and to facilitate the payment of tax refunds without volume adjustments of gasoline purchased tax-paid and then used in other states. (Title 122A, Arts. 9.112(1), (2), (3), (4), (5).)

Sec. 153.106. Permits: Application

(a) A distributor, interstate trucker, or aviation fuel dealer shall file an application with the comptroller for one of the nonassignable permits provided for in this subchapter.

(b) The comptroller shall promulgate the application form, which must contain the following information:

(1) the name under which the applicant transacts or intends to transact business;

(2) the principal office, residence, or place of business in Texas of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(4) other information required by the comptroller. (Title 122A, Arts. 9.102, 9.107.)

Sec. 153.107. Distributor's Permit

A person performing the functions of a distributor shall obtain a distributor's permit. (Title 122A, Art. 9.103.)

Sec. 153.108. Interstate Trucker's Permit

An interstate trucker's permit authorizes a person who imports gasoline into Texas in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 or more gallons to report and pay the tax due on the gasoline imported into this state or to claim a credit or refund of the tax paid on gasoline purchased in Texas and used in other states. (Title 122A, Art. 9.104.)

Sec. 153.109. Trip Permits

(a) In lieu of an annual interstate trucker's permit, a person bringing a motor vehicle into this state for commercial purposes with fuel supply tanks having an aggregate capacity of 42 or more gallons may obtain a

trip permit. The trip permit must be obtained prior to entry into the state or at the time of entry.

(b) No more than five trip permits for each person may be issued during a calendar year.

(c) A fee for each trip permit shall be collected from the applicant and shall be an amount equivalent to the tax payable on the quantity of gasoline that could be imported in the fuel supply tanks of the motor vehicle, but not less than $5.

(d) No reports are required with respect to the vehicle.

(e) Operating a motor vehicle without a valid interstate trucker's or trip permit may subject the operator to a penalty under Section 153.402 of this code. (Title 122A, Art. 9.105.)

Sec. 153.110. Aviation Fuel Dealer's Permit

A person who delivers gasoline exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment shall obtain an aviation fuel dealer's permit. A person who obtains an aviation fuel dealer's permit may sell aviation fuel to another aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. The holder of an aviation fuel dealer's permit may not act as a distributor of gasoline other than as provided by this section. (Title 122A, Art. 9.106.)

Sec. 153.111. Distributor May Perform Other Functions

A distributor may operate under the distributor's permit as an interstate trucker or an aviation fuel dealer without securing a separate permit, but is subject to all other conditions, requirements, and liabilities imposed on those permittees. (Title 122A, Art. 9.108.)

Sec. 153.112. Permits: Periods of Validity

(a) A distributor's permit is permanent and is valid so long as the permittee has in force and effect the required bond or security and furnishes timely reports as required, or until the permit is surrendered by the holder or canceled by the comptroller.

(b) An aviation fuel dealer's permit is permanent and is valid until the permit is surrendered by the holder or canceled by the comptroller.

(c) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calendar year or until the permit is surrendered by the holder or canceled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee has in force and effect the required bond or security and furnishes timely reports as required. An interstate trucker exempted from bonding and reporting requirements by Section 153.116(b) of this code must file the affidavit required by that section before the permit may be issued.

(d) A trip permit is valid for the period stated on it as determined by the comptroller. (Title 122A, Art. 9.109.)

Sec. 153.113. Display of Permit

(a) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which gasoline is sold, distributed, or used, and in each motor vehicle used by the permit holder to transport gasoline purchased by him for resale, distribution, or use.

(b) A person holding an interstate trucker's permit shall reproduce the permit and carry a photocopy with each motor vehicle being operated into or from the state. (Title 122A, Art. 9.110.)

Sec. 153.114. List of Distributors and Aviation Fuel Dealers

The comptroller, on or before December 20 of each year, shall mail or distribute to all permitted distributors a printed alphabetical list of permitted distributors and aviation fuel dealers who are qualified to purchase gasoline tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to the distributors each month. A current and effective permit or the list furnished by the comptroller is evidence of the validity of the permit until the comptroller notifies distributors of a change in the status of a permit holder. (Title 122A, Art. 9.111.)

Sec. 153.115. Tax Payments by an Interstate Trucker; Allowance

(a) An interstate trucker who imports gasoline into Texas in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 or more gallons for each vehicle shall report and pay the tax at the imposed rate on gasoline that is imported and used on Texas highways. The number of gallons of gasoline used on Texas highways shall be computed by dividing the total miles traveled in all states by the total number of gallons of gasoline delivered into the fuel supply tanks of motor vehicles in all states. The mileage factor obtained shall be divided into the total Texas miles traveled in order to determine the number of gallons of gasoline used in Texas.

(b) An interstate trucker shall remit all taxes due by him based on the applicable tax rate for each gallon on gasoline consumed within the state at the time of the filing of his quarterly reports.

(c) A permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of gasoline on payment of the taxes to the state for the expense of recordkeeping, reporting, and remitting the tax. (Title 122A, Art. 9.112(6).)

Sec. 153.116. Bonds and Other Security for Taxes

(a) A distributor or interstate trucker shall post a surety bond equal to two times the highest tax that could accrue on tax-free gasoline purchased or acquired during a reporting period. The minimum bond is $1,000 for a distributor and $500 for an interstate trucker. The maximum bond for a distributor or interstate trucker is $100,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event he may require one or more bonds or securities in a total amount exceeding $100,000.

(b) A permitted interstate trucker who maintains all fuel records in Texas, and all or substantially all of whose highway use is made with gasoline purchased within this state with the tax paid, may be exempted from the bonding requirements under an annual affidavit to the comptroller attesting to the intrastate or substantially intrastate tax-paid purchases of gasoline.

(c) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(d) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of U. S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury; or

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in Texas that is a member

of the FDIC or the FSLIC in an amount at least equal to the bond amount required.

(e) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(f) No surety bond or other form of security may be released until it is determined by examination or audit that no tax, penalty, or interest liability exists. The cash or securities shall be released within 60 days after the comptroller determines that no liability exists.

(g) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due this state by a person in whose behalf the cash or certificate security was deposited.

(h) A surety on a bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. The comptroller, promptly on receipt of the request, shall notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of the state, or other authorized security, in the amount required in this section, the comptroller shall cancel the permit in the manner provided by this chapter.

(i) A permittee may request an examination or audit to obtain release of the security when he relinquishes the permit or when he desires to substitute one form of security for an existing one. (Title 122A, Art. 9.-113.)

Sec. 153.117. Records

(a) A distributor shall keep a record showing the number of gallons of:

(1) all gasoline inventories on hand at the first of each month;

(2) all gasoline refined, compounded, or blended;

(3) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;

(4) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(5) all gasoline lost by fire or other accident.

(b) A dealer shall keep a record showing the number of gallons of:

(1) gasoline inventories on hand at the first of each month;

(2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all gasoline sold or used, showing the date of the sale or use; and

(4) all gasoline lost by fire or other accident.

(c) An interstate trucker shall keep a record of:

(1) the total miles traveled in all states by all vehicles traveling into or from Texas and the total quantity of gasoline consumed in those vehicles; and

(2) the total miles traveled in Texas and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in Texas.

(d) An aviation fuel dealer shall keep a record showing the number of gallons of:

(1) all gasoline inventories on hand at the first of each month;

(2) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;

(3) all gasoline sold or used in aircraft or aircraft servicing equipment; and

(4) all gasoline lost by fire or other accident.

(e) The records of an aviation fuel dealer made under Subsection (d)(3) of this section must show:

(1) the name of the purchaser or user of gasoline;

(2) the date of the sale or use of gasoline; and

(3) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline is used.

(f) The comptroller may require selective schedules from a distributor, dealer, aviation fuel dealer, interstate trucker, or common or contract carrier for any purchases, sales, or deliveries of gasoline when the schedules are not inconsistent with the requirements of this chapter.

(g) The records required must be kept for four years and are open to inspection at all times by the comptroller and the attorney general. (Title 122A, Art. 9.114.)

Sec. 153.118. Reports and Payments

(a) On or before the 25th day of each month, a distributor shall file a report and remit the amount of tax required to be collected during the preceding month. The report shall be executed by the distributor or his representative and shall be filed with the comptroller on a form provided or approved by the comptroller, containing complete and detailed information not inconsistent with the requirements of this chapter of gasoline transactions. A distributor required to file a report under this section who has not sold or used any gasoline during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of a distributor to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(b) On or before the 25th day of the month following the end of each calendar quarter, an interstate trucker shall file a report and remit the amount of tax due. The report shall be properly executed and filed with the comptroller and must contain complete and detailed information as the comptroller may require on forms provided for that purpose. An interstate trucker who has not used any gasoline during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of an interstate trucker to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(c) An interstate trucker who maintains all fuel records in Texas and all or substantially all of whose highway use is made with gasoline purchased within this state with the tax paid may be exempted from the quarterly reporting requirements under an annual affidavit to the comptroller attesting to the intrastate, or substantial intrastate, tax-paid purchases of gasoline.

(d) An aviation fuel dealer is not required to file a report with the comptroller. (Title 122A, Art. 9.115.)

Sec. 153.119. Refunds of Taxes Paid on Excepted Uses of Gasoline

(a) A person who exports, sells to the federal government, loses by fire or other accident, or uses gasoline for the purpose of operating or propelling a motorboat, tractor used for agricultural purposes, or stationary engine, or for another purpose except in a vehicle operated or intended to be operated on the public highways of this state, and who has paid the tax imposed on gasoline by this chapter either directly or indirectly is, when the person has complied with the invoice and filing provisions of this section and the rules of the comptroller, entitled to reimbursement of the tax paid by him, less a filing fee and any amount allowed distributors, wholesalers or jobbers, dealers, or others under Section 153.105(c) of this code.

(b) A person may file a refund claim for tax paid on the gasoline used in motor vehicles that are operated exclusively off the public highways except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in incidental travel.

(c) A permitted interstate trucker is entitled to a credit equivalent to the tax rate for each gallon paid on all gasoline on which the gasoline tax has been paid and later consumed in vehicles outside the state. If the amount of credit to which the interstate trucker is entitled for any calendar quarter exceeds the amount of tax for which the interstate trucker is liable for gasoline consumed in the vehicles during the reporting period, the excess shall be allowed as a credit or refund on a timely filed quarterly report against tax for which the interstate trucker would be otherwise liable for any of the three succeeding quarters. Evidence of the mileage traveled and gallonage consumed and the payment of the gasoline tax on a form as may be required by or is satisfactory to the comptroller shall be furnished by an interstate trucker claiming a credit or tax refund.

(d) If the quantity of gasoline used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund.

(e) A person who exports or loses by fire or other accident 100 or more gallons of gasoline on which the tax has been paid, or sells gasoline in any quantity to the United States government for the exclusive use of that government on which the tax has been paid, may file a claim for a refund of the net tax paid to the state in the manner provided by this chapter or as the comptroller may direct. A permitted distributor who establishes proof satisfactory to the comptroller of export, loss by accident, or sale to the United States, may take a 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 one year after the date of the exportation, loss, or sale.

(f) The right to receive a refund under this section is not assignable, except that a person residing or maintaining a place of business outside the state who purchases 100 or more gallons of gasoline and forthwith exports the entire quantity may assign his right to claim a refund to the permitted distributor from whom the gasoline was purchased or to any

permitted distributor who has paid the tax on the gasoline either directly or through another permitted distributor in Texas. If a distributor secures an assignment and the proof of export required by the comptroller, he may credit the tax paid on any monthly report filed with the comptroller within one year after the first day of the month following the date of delivery of the gasoline to the exporter. (Title 122A, Art. 9.116.)

Sec. 153.120. Claims for Refunds

(a) A refund claim must be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

(1) the stamped or preprinted name and address of the seller;

(2) the name of the purchaser;

(3) the date of delivery of the gasoline;

(4) the date of the issuance of the invoice (if different from the date of fuel delivery);

(5) the number of gallons of gasoline delivered;

(6) the amount of tax, either separately stated from the selling price or a notation that the selling price includes the tax; and

(7) the type of vehicle or equipment, such as a motorboat, railway engine, highway vehicle, off-highway vehicle, or refrigeration unit or s ationary engine into which the fuel is delivered.

(b) The invoice shall be made out in duplicate. The original invoice shall be delivered to the purchaser of the gasoline no later than 30 days after the date of delivery of the gasoline. The duplicate invoice shall be retained by the seller at his place of business. If the delivery of gasoline is made through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases made during a 30-day billing cycle.

(c) A person who files a claim for a tax refund on gasoline used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits his right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error. (Title 122A, Art. 9.-117.)

Sec. 153.121. When Gasoline Tax Refund May be Filed

(a) Except as provided by this section, a claim for a refund must be filed with the comptroller within one year after the first day of the calendar month following the purchase, use, delivery, export, or loss by fire or other accident of gasoline, whichever period expires latest.

(b) An interstate trucker may accumulate credits for four successive calendar quarters, but he must take the credit or claim a refund on a report filed on or before the 25th day following the fourth quarter.

(c) If an audit of a distributor determines that tax-free sales were made to an unauthorized purchaser and the purchaser could have filed for a refund if the tax had been paid at the time of the sale, the unauthorized purchaser must file a refund claim within one year after the date of the final assessment. (Title 122A, Art. 9.118.)

Sec. 153.122. Gasoline Tax Refund Payment and Filing Fee

(a) After examination of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund:

(1) the two percent deducted originally by the distributor on the first sale or distribution of the gasoline; and

(2) $1.50 as a filing fee.

(b) The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of this section. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law. (Title 122A, Art. 9.119.)

[Sections 153.123–153.200 reserved for expansion]

SUBCHAPTER C. DIESEL FUEL TAX

Sec. 153.201. Diesel Fuel Tax Imposed

A tax is imposed on the first sale or use of diesel fuel in this state. (Title 122A, Art. 9.201(1) (part).)

Sec. 153.202. Tax Rates

(a) The diesel fuel tax rate is 6.5 cents for each gross or volumetric gallon or fractional part sold or used in this state except as provided by Subsection (b) of this section.

(b) The diesel fuel tax rate for diesel fuel sold by a permitted supplier to a transit company for exclusive use in its transit vehicles under an exemption certificate issued by the comptroller is six cents for each gallon. (Title 122A, Art. 9.201(1) (part), (1)(F).)

Sec. 153.203. Exceptions

The tax imposed by this subchapter does not apply to:

(1) diesel fuel delivered by a permitted supplier to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or barge for export from this state, if the diesel fuel is moved forthwith outside this state;

(2) diesel fuel sold by a permitted supplier to the federal government for its exclusive use;

(3) diesel fuel sold or delivered by a permitted supplier to another permitted supplier or bonded user, to the bulk storage facility of a diesel tax prepaid user, or to a purchaser who provides a signed statement as provided by Section 153.205 of this code, but not including a delivery of tax-free diesel fuel into the fuel supply tanks of a motor vehicle, except for a motor vehicle owned by the federal government;

(4) diesel fuel sold or delivered by a permitted supplier into the storage facility of a permitted aviation fuel dealer, from which diesel fuel will be sold or delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment;

(5) diesel fuel sold or delivered by a permitted supplier into fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(6) kerosene when delivered by a permitted supplier into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use; or

(7) diesel fuel sold or delivered by one aviation fuel dealer to another aviation fuel dealer who will deliver the diesel fuel exclusively into the supply tanks of aircraft or aircraft servicing equipment. (Title 122A, Arts. 9.201(1)(A), (B), (C), (D), (E), (G), (H).)

Sec. 153.204. Computation of Tax

(a) The tax shall be computed and paid to the state on the gross or volumetric gallons of taxable diesel fuel sold to dealers or bulk users, as shown by the authorized measurement certificate issued for the cargo tank making deliveries, or as shown by any other measuring device approved by the comptroller.

(b) For a supplier whose diesel fuel deliveries are made to retail outlets that are operated by him or deliveries by him on consignment, the tax on sales to users and consumers shall be computed on the basis of actual sales.

(c) If the comptroller is not satisfied with a tax return or the amount of tax required to be paid to the state by a supplier who elects to report on the basis of actual sales, the comptroller may compute and determine the amount required to be paid on the basis of the beginning inventory, showing the total gallons of diesel fuel in storage at the location on the first day of the calendar month, plus the total gallons of diesel fuel delivered into the storage facility during the month, and less the total gallons of diesel fuel in the storage facility at the end of the calendar month.

(d) This section does not prohibit volume correction of diesel fuel under accepted practices when sold or distributed to or between permitted suppliers, but reports filed with the comptroller must show tax-paid purchases and taxable sales and distributions in gross quantities. (Title 122A, Arts. 9.201(2), (3), (4), (5).)

Sec. 153.205. Statement for Purchase of Diesel Fuel Tax Free

(a) The first sale or use of diesel fuel in this state is taxable, except that the sale of diesel fuel may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement that stipulates that:

(1) the purchaser does not operate any diesel-powered motor vehicles on the public highway;

(2) all of the diesel fuel will be consumed by the purchaser and no diesel fuel purchased on a signed statement will be resold; and

(3) none of the diesel fuel purchased in this state will be delivered or permitted by the purchaser to be delivered into fuel supply tanks of motor vehicles.

(b) The signed statement from the purchaser relieves the permitted supplier from the burden of proof that the sale of diesel fuel was not taxable to the purchaser and remains in effect unless:

(1) the statement is revoked in writing by the purchaser or supplier;

(2) the comptroller notifies the supplier in writing that the purchaser may no longer make tax-free purchases; or

(3) the supplier is put on notice by making taxable sales of diesel fuel to a purchaser who has previously submitted a signed statement to this supplier.

(c) A taxable sale to a person who has previously submitted a signed statement creates a rebuttable presumption that the supplier had reasonable notice that all subsequent sales should have been taxable.

(d) A taxable use of any part of the diesel fuel purchased under a signed statement shall, in addition to any criminal penalty, forfeit the right of the person to purchase diesel fuel tax free for a period of one year from the date of the offense, and any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the supplier, is a

debt of the purchaser to the supplier until paid, and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any diesel fuel used for non-highway purposes under Section 153.222 of this code.

(e) The statement must be signed by the purchaser or his representative.

(f) The comptroller's regulations may allow separate operating divisions of corporations to give separate signed statements as if they were different legal entities.

(g) The comptroller may promulgate necessary forms and rules to comply with this section. (Title 122A, Art. 9.202.)

Sec. 153.206. Collection and Payment of Tax; Allowances

(a) A supplier who makes a sale or use of diesel fuel in this state for a purpose other than those exceptions listed in Section 153.203 of this code shall at the time of sale or use be liable to the state for the tax imposed in this subchapter and shall report and pay the tax in the manner provided in the subchapter.

(b) A dealer shall collect the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle and shall report and pay to the state any tax collected that has not been paid to a permitted supplier.

(c) A user, except a diesel tax prepaid user, shall report and pay to the state the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle, unless the tax has been paid to a permitted supplier or a dealer, or, as a diesel tax prepaid user, the tax has been prepaid directly to the comptroller.

(d) An interstate trucker who imports diesel fuel into Texas in the fuel supply tanks of a motor vehicle having an aggregate capacity of 42 or more gallons for each vehicle shall report and pay the tax at the rate imposed on diesel fuel that is imported and used on Texas highways. The number of gallons of diesel fuel used on Texas highways shall be computed by dividing the total miles traveled in all states by the total number of gallons of diesel fuel delivered into the fuel supply tanks of motor vehicles in all states. The mileage factor obtained shall be divided into the total Texas miles traveled in order to determine the number of gallons of diesel fuel used in Texas. An interstate trucker shall remit all taxes due by him based on the diesel fuel tax rate for each gallon on diesel fuel consumed within the state at the time of the filing of the quarterly report.

(e) Diesel fuel is deemed to be used when it is delivered into fuel supply tanks.

(f) The tax on 1½ percent of the taxable gallons of diesel fuel sold or distributed in this state shall be allocated to the persons selling, distributing, or handling diesel fuel in this state. The allocation or allowance shall be deducted by the supplier in the payment to the state of the taxes imposed and shall be apportioned as follows:

(1) one percent to the permitted supplier making the first taxable sale or delivery of the diesel fuel to dealers and users and paying the tax imposed to the state for the expense of collecting, accounting for, reporting, and remitting the taxes collected and keeping records; and

(2) one-half of one percent of the taxable gallons to users who purchase in quantities of 2,500 or more gallons for each delivery, dealers, or consignors to cover evaporation and handling losses sus-

tained from the time the diesel fuel is delivered to their storage facilities until it is sold or delivered into fuel supply tanks of motor vehicles.

(g) A bonded user or permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of diesel fuel on payment of the taxes to this state for the expense of recordkeeping, reporting, and remitting the tax.

(h) A person who performs more than one of the functions or activities for which a deduction is allowed is entitled to the apportionment or allowance for each function or activity, subject to the limitations prescribed for each function or activity, but the aggregate allowance may not exceed 1½ percent.

(i) The allocation or allowance shall be distributed under rules prescribed by the comptroller.

(j) The intent and purpose of the allowance or allocation to suppliers, dealers, or users is to reimburse fully persons acting in those capacities for losses sustained by them from evaporation, temperature changes, and ordinary handling of diesel fuel and to facilitate the payment of tax refunds without volume adjustments of diesel fuel purchased tax-paid and then used in other states. (Title 122A, Art. 9.203.)

Sec. 153.207. Permits; Application

(a) A bonded supplier, bonded user, interstate trucker, diesel tax prepaid user, or aviation fuel dealer shall file an application with the comptroller for one of the nonassignable permits provided for in this subchapter.

(b) The comptroller shall promulgate the application form, which must contain the following information:

(1) the name under which the applicant transacts or intends to transact business;

(2) the principal office, residence, or place of business in Texas of the applicant;

(3) if the applicant is not an individual, names of the principal officers of an applicant corporation, names of each partner in an applicant partnership, and the office, street, or post office address of each; and

(4) other information required by the comptroller.

(c) The comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued. (Title 122A, Arts. 9.204, 9.211.)

Sec. 153.208. Bonded Supplier's Permit

(a) A bonded supplier's permit authorizes a person to sell tax-free diesel fuel to:

(1) another bonded supplier;

(2) a bonded user;

(3) an aviation fuel dealer;

(4) a diesel prepaid user if delivered into his bulk storage facilities only; and

(5) a person issuing a signed statement.

(b) A bonded supplier's permit authorizes a person to supply tax-paid diesel fuel to suppliers and other purchasers.

(c) A bonded supplier may not make a tax-free sale or delivery of diesel fuel into the fuel supply tanks of a motor vehicle other than a motor vehicle owned by the United States. (Title 122A, Art. 9.205.)

Sec. 153.209. Bonded User Permit

A bonded user permit authorizes a user whose purchases of diesel fuel are predominantly for nonhighway use to purchase diesel fuel tax free from permitted suppliers and to report and pay taxes to this state on that part of the diesel fuel that is delivered into the fuel supply tanks of motor vehicles owned or operated by him. (Title 122A, Art. 9.206.)

Sec. 153.210. Diesel Tax Prepaid User Permit

(a) A diesel tax prepaid user permit authorizes a person whose use of diesel fuel is predominantly for nonhighway use, but who owns or operates one or more passenger cars or light trucks only in the weight class shown in this section to elect to prepay an annual tax on the fuel delivered from his own tax-free storage rather than obtain a bonded user permit. If he elects to obtain a diesel tax prepaid user permit, he must prepay the tax at the rate prescribed for each motor vehicle based on the class of registered gross weight. A person whose purchases of diesel fuel are predominantly for highway use does not qualify for a diesel tax prepaid user permit.

(b) The vehicle classes and amounts of tax are:

Class A	Less than 2,500 pounds	$20
Class B	2,500 to 3,500 pounds	36
Class C	3,501 to 4,500 pounds	45
Class D	4,501 to 7,000 pounds	54

(Title 122A, Art. 9.207.)

Sec. 153.211. Interstate Trucker's Permit

An interstate trucker's permit authorizes a person who imports diesel fuel into the state in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 or more gallons for each vehicle to report and pay the tax due on diesel fuel imported into this state or to claim a credit or a refund of the tax paid on diesel fuel purchased in this state and then used in other states. An interstate trucker may not make tax-free purchases of diesel fuel. (Title 122A, Art. 9.208.)

Sec. 153.212. Trip Permits

(a) In lieu of an annual interstate trucker's permit, a person bringing motor vehicles into this state for commercial purposes with fuel supply tanks having an aggregate capacity of 42 or more gallons for each vehicle may obtain a trip permit.

(b) The trip permit must be obtained before entry into the state or at the time of entry. No more than five trip permits may be issued during a calendar year to a person operating interstate.

(c) A fee for each trip permit shall be collected from the applicant. The fee is an amount equal to the tax payable on the quantity of diesel fuel that could be imported in the fuel supply tanks of the motor vehicle, but not less than $5. (Title 122A, Art. 9.209.)

Sec. 153.213. Aviation Fuel Dealer's Permit

An aviation fuel dealer's permit authorizes a person to deliver diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. The holder of an aviation fuel dealer's permit may sell or deliver diesel fuel to another aviation fuel dealer who will deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. The holder of an aviation fuel dealer's permit may not act as a supplier of diesel fuel other than as allowed by this section. (Title 122A, Art. 9.210.)

Sec. 153.214. Supplier May Perform Other Functions

A supplier may operate under the supplier's permit as a user, dealer, interstate trucker, or aviation fuel dealer without securing a separate permit, but is subject to all other conditions, requirements, and liabilities imposed on those permittees. (Title 122A, Art. 9.212.)

Sec. 153.215. Permits: Periods of Validity

(a) A bonded supplier's and bonded user permit is permanent and valid as long as the permittee has in force and effect the required bond or security and furnishes timely reports as required, or until the permit is surrendered by the holder or canceled by the comptroller.

(b) An aviation fuel dealer's permit is permanent and is valid until the permit is surrendered by the holder or canceled by the comptroller.

(c) An interstate trucker's permit is valid from the date of issuance through December 31 of each calendar year or until the permit is surrendered by the holder or canceled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee has in force and effect the required bond or security and furnishes timely reports as required. An interstate trucker exempted by Section 153.218(b) of this code must file the affidavit required by that section before the permit may be issued.

(d) A trip permit is valid for the period stated on it as determined by the comptroller.

(e) A diesel tax prepaid user permit shall be issued annually and is valid from the date of its issuance through December 31 of the calendar year unless a motor vehicle for which the tax is prepaid is sold or no longer used on the public highway. A diesel tax prepaid user must make application for a new permit each calendar year. (Title 122A, Art. 9.213.)

Sec. 153.216. Display of Permit

(a) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which diesel fuel is sold, distributed, or used, and in each motor vehicle used by the permit holder to transport diesel fuel purchased by him for resale, distribution, or use.

(b) A person holding an interstate trucker's permit shall reproduce the permit and carry a photocopy with each motor vehicle being operated into or from the state. (Title 122A, Art. 9.214.)

Sec. 153.217. List of Suppliers, Bonded Users, and Aviation Fuel Dealers

(a) The comptroller, on or before December 20 of each calendar year, shall mail or distribute to each bonded supplier a printed alphabetical list of permitted suppliers, bonded users, and aviation fuel dealers who are qualified to purchase diesel fuel tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to each supplier each month.

(b) The comptroller, on or before January 31 of each calendar year, shall mail or distribute to each bonded supplier a printed alphabetical list of diesel tax prepaid user permittees who are qualified to purchase diesel fuel tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to each supplier each month. (Title 122A, Art. 9.215.)

Sec. 153.218. Bonds and Other Security for Taxes

(a) Except as provided by Subsection (b) of this section, a supplier, bonded user, or interstate trucker shall post a surety bond equal to two times the highest tax that will or may be expected to accrue on taxable sales and uses of diesel fuel during a reporting period. The minimum bond for a supplier is $1,000. The minimum bond for a bonded user or interstate trucker is $500.

(b) A permitted interstate trucker who maintains all fuel records in Texas, and all or substantially all of whose highway use is made with diesel fuel purchased within this state with the tax paid may be exempted from the bonding requirements under an annual affidavit to the comptroller attesting to the intrastate or substantially intrastate tax-paid purchase of diesel fuel.

(c) A bond must be a continuing instrument, must constitute a new and separate obligation, in the penal sum named in the bond, for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(d) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury; or

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in the state that is a member of the FDIC or the FSLIC in an amount at least equal to the bond amount required.

(e) If the amount of an existing bond becomes insufficient, or a surety on a bond becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or an additional bond.

(f) No surety bond or other form of security may be released until it is determined by examination or audit that no tax, penalty, or interest liability exists. The cash or securities shall be released within 60 days after the comptroller determines that no liability exists.

(g) The comptroller may use the cash or certificate of deposit to satisfy a final determination of delinquent liability or a judgment secured in an action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due this state by a person in whose behalf the cash or securities were deposited.

(h) A surety on any bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued or that accrues before the expiration of the 30-day period. The comptroller promptly on receipt of the request shall notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of the state, or other authorized security, in the amount required in this section, the comptroller shall cancel the permit in the manner provided in this chapter.

(i) A permittee may request an examination or audit to obtain release of the security when he relinquishes the permit or when he desires to

substitute one form of security for an existing one. (Title 122A, Art. 9.-216.)

Sec. 153.219. Records

(a) A supplier shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel refined, compounded, or blended;

(3) all diesel fuel purchased or received, showing the name of the seller, and the date of each purchase or receipt;

(4) all diesel fuel sold, distributed, or used showing the name of the purchaser and the date of sale, distribution, or use; and

(5) all diesel fuel lost by fire or other accident.

(b) A dealer shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller, the date of each purchase or receipt;

(3) all diesel fuel sold, distributed, or used; and

(4) all diesel fuel lost by fire or other accident.

(c) A bonded user or other user with nonhighway equipment uses who files a claim for a refund shall keep a record showing the number of gallons of:

(1) inventories of all diesel fuel on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase;

(3) all diesel fuel deliveries into the fuel supply tanks of motor vehicles;

(4) diesel fuel used for other purposes, showing the purpose for which used; and

(5) all diesel fuel lost by fire or other accident.

(d) An aviation fuel dealer shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all diesel fuel sold, distributed, or used in aircraft or aircraft servicing equipment; and

(4) diesel fuel lost by fire or other accident.

(e) The records of an aviation fuel dealer made under Subsection (d)(3) of this section must show:

(1) the name of the purchaser or user of diesel fuel;

(2) the date of the sale, distribution, or use of the diesel fuel; and

(3) the registration or "N" number of the airplane or a description or number of the aircraft servicing equipment in which diesel fuel is used.

(f) A permitted interstate trucker shall keep a record of:

(1) the total miles traveled in all states by all vehicles traveling into or from Texas and the total quantity of diesel fuel consumed in those vehicles; and

(2) the total miles traveled in Texas and the total quantity of diesel fuel delivered into the fuel supply tanks of motor vehicles in Texas.

(g) The comptroller may require selective schedules from a supplier, dealer, aviation fuel dealer, interstate trucker, or common or contract

carrier for a purchase, sale, or delivery of diesel fuel if the schedules are not inconsistent with the requirements of this chapter.

(h) The records required must be kept for four years and are open to inspection at all times by the comptroller or the attorney general. (Title 122A, Art. 9.217.)

Sec. 153.220. Invoices

(a) A delivery of diesel fuel into the fuel supply tanks of a motor vehicle having an aggregate capacity of 42 or more gallons shall be evidenced by an invoice issued in duplicate by a dealer or an invoice or a distribution log issued by a bonded user or other user.

(b) An invoice must be carried in the vehicle until the next purchase or delivery of fuel into that vehicle. A distribution log must be carried with the vehicle until the end of the calendar month.

(c) A dealer shall also issue an invoice for a sale, distribution, or use for a purpose other than propelling a motor vehicle on the public highways of this state.

(d) The invoice or distribution log must contain:

(1) the name and address of the person making the delivery stamped or preprinted on it;

(2) a statement of the amount of the diesel fuel tax separate from the selling price or a statement that the diesel fuel tax is included in the selling price;

(3) a statement that no diesel fuel tax was collected by the seller if the invoice is to be used by the seller to support a refund claim; and

(4) spaces for providing the following:

(A) the name of the purchaser;

(B) the date of delivery of the fuel;

(C) the number of gallons delivered;

(D) the odometer or hubmeter reading;

(E) the state highway license or unit number;

(F) the type of vehicle or equipment, such as a motorboat, railway engine, highway vehicle, off-highway vehicle, or refrigeration unit or stationary engine into which the fuel is delivered; and

(G) the signature of the recipient.

(e) If the delivery of tax-paid diesel fuel is made through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases made during a 30-day billing cycle.

(f) If the fuel delivery into the fuel supply tanks of a motor vehicle is through a method where there is no seller or agent present then the purchaser or recipient must prepare the required invoice at the time of delivery. (Title 122A, Art. 9.218.)

Sec. 153.221. Reports and Payments

(a) On or before the 25th day of each month, a supplier shall file a report of diesel fuel transactions and remit the amount of tax required to be collected during the preceding month. A report must be filed on a form provided by the comptroller and contain information required by the comptroller, showing complete and detailed information of diesel fuel transactions during the preceding month. A supplier required to file a report under this section who has not sold, used, or distributed any diesel fuel during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of a supplier to obtain

forms from the comptroller is no excuse for the failure to file a report. The report must be executed by the supplier or his representative and is subject to the penalties provided in this chapter.

(b) On or before the 25th day of the month following the end of each calendar quarter, a bonded user or interstate trucker shall file a report and remit the amount of tax due except as provided by Subsection (d) of this section. A report must be executed and filed with the comptroller and contain complete and detailed information on diesel fuel transactions during the preceding calendar quarter and other information required by the comptroller on forms provided for that purpose. A bonded user or interstate trucker required to file a report under this section who has not sold, used, or distributed any diesel fuel during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of a bonded user or interstate trucker to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(c) No report is required to be filed by:

(1) an aviation fuel dealer;
(2) a trip permit user;
(3) a diesel tax prepaid user;
(4) a person issuing signed statements; or
(5) a common or contract carrier.

(d) A permitted interstate trucker who maintains all fuel records in Texas, and all, or substantially all, of whose highway use is made with diesel fuel purchased within this state with the tax paid may be exempted from the quarterly reporting requirements under an annual affidavit to the comptroller attesting to the intrastate, or substantially intrastate, purchases of tax-paid diesel fuel. (Title 122A, Art. 9.219.)

Sec. 153.222. Refunds of Taxes Paid on Excepted Uses of Diesel Fuel

(a) A dealer who has paid tax on diesel fuel that has been used or sold for use by the dealer for any purpose other than propelling a motor vehicle on the public highways of this state or that has been sold to the United States for its exclusive use, and a user who has paid tax on any diesel fuel that has been used by him for a purpose other than propelling a motor vehicle on the public highways may file a claim for a refund of taxes paid, less the deduction allowed vendors and a filing fee.

(b) A person may file a refund claim for tax paid on the diesel fuel used in motor vehicles that are operated exclusively off the public highways except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in the incidental travel.

(c) A permitted interstate trucker is entitled to a credit equivalent to the tax rate for each gallon paid on all diesel fuel on which the diesel fuel tax has been paid and later consumed in motor vehicles outside the state. If the amount of credit to which the interstate trucker is entitled for any calendar quarter exceeds the amount of tax for which the interstate trucker is liable for diesel fuel consumed in the motor vehicles during the reporting period, the excess shall be allowed as a credit or refund on a timely filed quarterly report against the tax for which the interstate trucker would be otherwise liable for any of the three succeeding quarters. Evidence of the mileage traveled and gallonage consumed and the payment of the diesel fuel tax, on a form that may be required by or is satisfactory to the comptroller, shall be furnished by the interstate trucker claiming the credit or tax refund.

(d) If the quantity of diesel fuel used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of diesel fuel consumed in those operations for tax credit or tax refund. If no separate metering device or other approved measuring method is provided, the following credit or refund procedures are authorized. A permitted supplier or bonded user who operates diesel-powered motor vehicles equipped with a power take-off or a diesel-powered auxiliary power unit mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may be allowed a five percent deduction from the taxable gallons used in this state in each motor vehicle so equipped. A user who is required to pay the tax on diesel fuel used in motor vehicles so equipped may file a claim for a refund not to exceed five percent of the total taxable fuel used in this state in each motor vehicle so equipped.

(e) A person who exports or loses by fire or other accident 100 or more gallons of diesel fuel on which the tax has been paid, or who sells diesel fuel in any quantity to the United States for its exclusive use on which the tax has been paid, may file a claim for a refund of the net tax paid to the state as the comptroller may direct. (Title 122A, Art. 9.220.)

Sec. 153.223. Claims for Refunds

(a) A refund claim must be filed with the comptroller on forms provided by the comptroller and show the date of filing, the period covered in the claim, the number of gallons of diesel fuel subject to refund, and other information required by the comptroller. A claim must be supported by one or more original invoices issued to or by the claimant, or such other information as the comptroller deems necessary.

(b) If a motor vehicle is sold, transferred, or destroyed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that calendar year. The owner or operator must submit to the comptroller an affidavit identifying the vehicle, the permit number, the circumstances entitling him to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund to the owner or operator that portion of the payment that corresponds to the number of complete months remaining in the calendar year for which the vehicle was no longer utilized. No refund may be made if the use of the vehicle ceased within the last month of the calendar year.

(c) A person who files a claim for a tax refund on diesel fuel used for a purpose for which a tax refund is not authorized, or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered, forfeits his right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error. (Title 122A, Arts. 9.221, 9.222(4).)

Sec. 153.224. When Diesel Fuel Tax Refund May be Filed

(a) Except as provided by this section, a claim for a refund must be filed with the comptroller within one year after the first day of the calendar month following the purchase, use, delivery, export, or loss by fire or other accident of diesel fuel, whichever period expires latest.

(b) An interstate trucker may accumulate credits for four successive calendar quarters, but he must take the credit or claim a refund on a report filed on or before the 25th day following the fourth quarter.

(c) If an audit of a supplier determines that tax-free sales were made to an unauthorized purchaser and the purchaser could have filed for a refund if the tax had been paid at the time of the sale, the unauthorized purchaser must file a refund claim within one year after the date of the final assessment. (Title 122A, Arts. 9.222(1), (2), (3).)

Sec. 153.225. Diesel Fuel Tax Refund Payments and Filing Fee

(a) After examination and approval of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund payment:

(1) the 1½ percent deducted originally by the supplier on the sale or delivery of the diesel fuel; and

(2) $1.50 as a filing fee.

(b) The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of the provisions of this chapter, and for payment of expenses in furnishing the claim forms and other forms. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law. (Title 122A, Art. 9.223.)

[Sections 153.226–153.300 reserved for expansion]

SUBCHAPTER D. LIQUEFIED GAS TAX

Sec. 153.301. Tax Imposed; Rate

(a) A tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state.

(b) The liquefied gas tax rate is five cents a gallon. (Title 122A, Art. 9.301(1).)

Sec. 153.302. Payment of Tax

(a) A person using a liquefied gas-propelled motor vehicle, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, that is required to be licensed in Texas for use on the public highways of Texas, shall prepay the liquefied gas tax to the comptroller on an annual basis.

(b) An interstate trucker operating a motor vehicle licensed in a base state other than Texas and any other out-of-state user shall pay the excise tax on delivery of the liquefied gas into the fuel supply tanks of a motor vehicle. (Title 122A, Arts. 9.301(2), (3).)

Sec. 153.303. Permits; Application; Display

(a) A bonded dealer, interstate trucker, or liquefied gas tax decal user shall file an application with the comptroller for the kind and class of a nonassignable permit required by this subchapter.

(b) An application for a permit must be filed on a form provided by the comptroller showing the kind and class of permit desired, and other information required by the comptroller.

(c) A permit shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A permit holder shall reproduce the permit and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. A person holding an interstate trucker's permit shall reproduce the permit and carry a copy with each motor vehicle

being operated into or from Texas. The liquefied gas tax decal user shall affix the decal in the lower right-hand corner of the front windshield of the passenger side of the vehicle. (Title 122A, Arts. 9.302, 9.306.)

Sec. 153.304. Bonded Dealer's Permit

A bonded dealer's permit authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate. (Title 122A, Art. 9.303.)

Sec. 153.305. Liquefied Gas Tax Decal Permit

(a) A user of liquefied gas for propulsion of a motor vehicle on the public highways of Texas shall pay in advance annually on each motor vehicle owned, operated, and licensed in Texas by him, a tax based on the registered gross weight in the following schedule:

Class A:	Less than 4,000 pounds	$ 72
Class B:	4,000 to 8,000 pounds	84
Class C:	8,001 to 12,500 pounds	120
Class D:	12,501 to 22,500 pounds	168
Class E:	22,501 and over	300

(b) The following special use liquefied gas tax decal and tax shall be required for the types of vehicles described below:

Class S:	Special purpose motor vehicle used for purposes which do not require travel on the public highways exceeding 5,000 miles annually	$ 48
Class T:	Transit carrier vehicles operated by a transit company	330
Class Y:	Motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation	204

(Title 122A, Art. 9.304.)

Sec. 153.306. Interstate Trucker's Permit

An interstate trucker's permit authorizes an interstate trucker operating a motor vehicle with a base license plate issued by a state other than Texas to import liquefied gas into this state in the fuel supply tanks of motor vehicles owned or operated by him for commercial purposes, to report and pay the tax due, and to make sales or distributions in Texas from his cargo tanks, but no delivery may be made in Texas into the fuel supply tanks of motor vehicles not bearing a current liquefied gas tax decal without first obtaining the required dealer's permit to make taxable sales. The interstate trucker's permit for users operating a motor vehicle with a base license plate issued by a state other than Texas is in lieu of the liquefied gas tax decal permit required to operate motor vehicles on the highways of the state. (Title 122A, Art. 9.305.)

Sec. 153.307. Permits: Periods of Validity

(a) A bonded dealer's permit is permanent and valid as long as the permittee has in force and effect the required cash bond and furnishes timely reports as required, or until the permit is surrendered by the holder or canceled by the comptroller.

(b) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calendar year, or until the permit is surrendered by the holder or canceled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee has in force and effect the required cash bond and furnishes timely reports as required.

(c) A liquefied gas tax decal permit shall be issued annually and is valid from the date of its issuance through December 31 of the calendar year unless a motor vehicle for which the tax is prepaid is sold or no longer used on the public highway. A liquefied gas tax decal permittee must make application for a new permit each calendar year. (Title 122A, Art. 9.307.)

Sec. 153.308. Security for Payment of Tax

(a) A person applying for a permit as a bonded dealer or interstate trucker shall at the time of application post a cash bond of $100.

(b) The cash bond shall be deposited in the suspense account of the state treasury and, on cancellation or surrender of a permit held by the person in whose behalf it was deposited, shall be released within 60 days after the permit holder has been cleared of all tax liability by the comptroller.

(c) The comptroller may withdraw and use any cash to satisfy any delinquent liability including tax, penalty, and interest or to pay any judgment secured in any action by this state. (Title 122A, Art. 9.308.)

Sec. 153.309. Computation of Taxes; Allowances

(a) A permitted dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle on which the tax is required to be collected is liable to the state for the tax imposed, and shall report and pay the tax in the manner required by this subchapter.

(b) A permitted interstate trucker shall report and pay to this state the tax at the rate imposed on each gallon of liquefied gas delivered by him into the fuel supply tank of a motor vehicle, unless the tax has been paid to a permitted dealer, and shall report and pay the tax on each gallon of liquefied gas imported into this state in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of the motor vehicles on the public highways of this state.

(c) The tax on one percent of the taxable gallons of liquefied gas sold in this state shall be allocated to the permitted dealer making the sale for the expense of collecting, accounting for, reporting, and remitting the taxes collected and keeping the records. The allocation allowance shall be deducted by the permitted dealers in the payment to the state.

(d) The tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons permitted as interstate truckers shall be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and remitting the taxes due. (Title 122A, Art. 9.309.)

Sec. 153.310. Records

(a) A bonded dealer shall keep for four years, open to inspection at all times by the comptroller and the attorney general, a complete record of all liquefied gas sold or delivered for taxable purposes.

(b) An interstate trucker shall keep for four years, open to inspection by the comptroller and the attorney general, a record of:

(1) the total miles traveled in all states by all the interstate trucker's motor vehicles traveling into or from Texas and the total quantity of liquefied gas used in the motor vehicles; and

(2) the total miles traveled in Texas and the total quantity of liquefied gas purchased in Texas, showing both tax-paid fuel delivered into the fuel supply tanks of motor vehicles and tax-free fuel delivered into storage facilities in Texas.

(c) Each taxable sale or delivery of liquefied gas into the fuel supply tanks of a motor vehicle, including deliveries by interstate truckers from bulk storage, shall be covered by an invoice. The invoice must be printed and contain the following:

(1) the preprinted or stamped name and address of the permitted dealer or interstate trucker;

(2) the date;

(3) the number of gallons delivered;

(4) the mileage recorded on the odometer;

(5) the state and state highway license number;

(6) the signature of the driver of the motor vehicle; and

(7) the amount of tax paid or accounted for separately from the selling price.

(d) The invoice must be carried with the vehicle and will serve as a trip permit. (Title 122A, Art. 9.310.)

Sec. 153.311. Reports and Payments

(a) A permitted dealer, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A permitted dealer who has not made taxable sales during the reporting period shall file with the comptroller the report setting forth the facts or information.

(b) Every permitted interstate trucker, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A report shall be filed with the comptroller and must contain the number of miles traveled in this state, the number of miles traveled outside this state, and other information required by the comptroller on forms provided for that purpose. An interstate trucker who is required to file a report under this section and who has not made interstate trips or used liquefied gas in motor vehicles in Texas during the reporting period shall file with the comptroller the report setting forth the facts or information. (Title 122A, Art. 9.311.)

Sec. 153.312. Refunds; Transfer of Decals

(a) If a motor vehicle bearing a liquefied gas tax decal is sold or transferred, the seller and purchaser shall promptly notify the comptroller of the sale or transfer and a new decal shall be issued in the new purchaser's name.

(b) If a motor vehicle bearing a liquefied gas tax decal is destroyed or the liquefied gas carburetor system removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that calendar year. The owner or operator shall submit to the comptroller an affidavit identifying the vehicle, the permit number, the decal number assigned to the vehicle, the circumstances entitling him to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the calendar year for which the tax has been paid, beginning with the month following the date on which the vehicle or the liquefied gas carburetor was no longer utilized. No refund may be made if the use of the vehicle ceased within the last month of the calendar year.

(c) A permitted interstate trucker is entitled to a refund of the amount of the Texas liquefied gas tax paid on each gallon of liquefied gas subsequently used outside this state. On verification by the comptroller that the interstate trucker's report was timely filed with all information required, he shall issue a warrant to the interstate trucker for the

amount of the refund less the one percent deducted originally by the permitted dealer making the sale and a filing fee of $1.50. Failure to file an interstate trucker report by the 25th of the month following the end of a calendar quarter forfeits the right to a refund. (Title 122A, Art. 9.312.)

[Sections 153.313–153.400 reserved for expansion]

SUBCHAPTER E. PENALTIES AND OFFENSES

Sec. 153.401. Failure to Pay Tax or Report

If a person having a permit as a distributor, supplier, user, dealer, or interstate trucker does not make a timely report and remittance of a tax due under this chapter, the permittee forfeits as a penalty two percent of the amount due and unpaid, and if the tax is not remitted or paid within 30 days after the date the comptroller gives the permittee notice of either the amount due or notice of failure to report, the permittee forfeits an additional eight percent of the amount due as a penalty. (Title 122A, Art. 9.012.)

Sec. 153.402. Prohibited Acts; Civil Penalties

A person forfeits to the state a civil penalty of not less than $25 nor more than $200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's or a trip permit when the person is required to hold one of those permits;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal;

(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;

(5) transports motor fuel in any cargo tank designated "out of order" by the comptroller;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(7) makes a taxable sale or delivery of liquefied gas without holding a valid bonded dealer's permit;

(8) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(9) makes a tax-free or taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal;

(10) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(11) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(12) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(13) furnishes a signed statement to a supplier for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(14) fails or refuses to comply with or violates a provision of this chapter; or

(15) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter. (Title 122A, Art. 9.014.)

Sec. 153.403. Criminal Offenses

Except as provided by Section 153.404 of this code, a person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2) is required to hold a valid trip permit or interstate trucker's permit, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's permit;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal;

(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;

(5) transports motor fuel in any cargo tank designated "out of order" by the comptroller;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(7) makes a sale or delivery of liquefied gas on which he knows the tax is required to be collected, if at the time the sale is made he does not hold a valid bonded dealer's permit;

(8) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(9) makes a tax-free or taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal;

(10) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(11) sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;

(12) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(13) refuses to permit the comptroller or the attorney general to inspect, examine, and audit a book or record required to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, common or contract carrier, or any person required to hold a permit under this chapter;

(14) refuses to permit the comptroller or the attorney general to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(15) refuses to permit the comptroller or the attorney general to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(16) as a diesel tax prepaid user fails to prepay the tax on every diesel-powered motor vehicle owned or operated by him;

(17) mutilates, destroys, or secretes a book or record required by this chapter to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or a person required to hold a permit under this chapter;

(18) is a distributor, bonded user, interstate trucker, or supplier and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(19) conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter;

(20) refuses, while transporting motor fuel, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(21) refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(22) transports motor fuel for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(23) is a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or other person required to hold a permit under this chapter, or the agent or employee of one of those persons and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person;

(24) transports in any manner motor fuel under a false cargo manifest;

(25) engages in a motor fuel transaction that requires that the person have a permit under this chapter without then and there holding the required permit;

(26) makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(27) forges, falsifies, or alters an invoice prescribed by law;

(28) makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(29) furnishes to a supplier a signed statement for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(30) holds an aviation fuel dealer's permit and makes a taxable sale or use of any gasoline or diesel fuel;

(31) fails to remit any tax funds collected by a distributor, supplier, user, dealer, interstate trucker, or any other person required to hold a permit under this chapter;

(32) makes a sale of diesel fuel tax free into a storage facility of a person who:

(A) is not permitted as a supplier, as an aviation fuel dealer, as a bonded user, or as a diesel tax prepaid user of diesel fuel; or

(B) does not furnish to the permitted supplier a signed statement prescribed in Section 153.205 of this code; or

(33) makes a sale of gasoline tax free to any person who is not permitted as either a distributor or an aviation fuel dealer. (Title 122A, Art. 9.015.)

Sec. 153.404. Criminal Offenses: Special Provisions and Exceptions

(a) A person does not commit an offense under Section 153.403 of this code unless he intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Section 153.403(12) of this code.

(b) Each day that a refusal prohibited under Section 153.403(13), (14), or (15) of this code continues is a separate offense.

(c) The prohibition under Section 153.403(32) of this code does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 153.203(1), (2), or (5) of this code.

(d) The prohibition under Section 153.403(33) of this code does not apply to the tax-free sale or distribution of gasoline under Section 153.-104(2) or (4) of this code. (Title 122A, Art. 9.016.)

Sec. 153.405. Criminal Penalties

(a) An offense under Sections 153.403(1) through (16) of this code is a Class C misdemeanor.

(b) An offense under Sections 153.403(17) through (19) of this code is a Class B misdemeanor.

(c) An offense under Sections 153.403(20) through (22) of this code is a Class A misdemeanor.

(d) An offense under Sections 153.403(23) through (33) of this code is a felony of the third degree. (Title 122A, Art. 9.017.)

Sec. 153.406. Criminal Penalties: Corporations and Associations

(a) Except as provided by Subsection (b) of this section, Subchapter E, Chapter 12, Penal Code, applies to offenses under this chapter committed by a corporation or association.

(b) The fine that may be fixed by the court under Section 12.-51(b)(2), Penal Code, for a Class A or Class B misdemeanor, is any amount not to exceed $5,000. The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(c) In addition to a sentence imposed on a corporation, the court may order the corporation to give notice of the conviction to any person. (Title 122A, Art. 9.018.)

Sec. 153.407. Venue of Criminal Prosecutions

The venue for a prosecution under this subchapter is in Travis County or in the county where the offense occurred. (Title 122A, Art. 9.019.)

[Sections 153.408–153.500 reserved for expansion]

SUBCHAPTER F. ALLOCATION OF TAXES

Sec. 153.501. Tax Administration Fund

(a) Before any other allocation of the taxes collected under this chapter is made, one percent of the gross amount of the taxes shall be deposited in the state treasury in a special fund, subject to the use of the comptroller in the administration and enforcement of this chapter.

(b) The unexpended portion of the special fund shall revert, at the end of the fiscal year, to the highway motor fuel tax fund for allocation to the other funds to which revenue is allocated by this subchapter in proportion to the amounts originally derived from the respective sources. (Title 122A, Arts. 9.120(1), 9.224(1), 9.313(1).)

Sec. 153.502. Allocation of Unclaimed Refundable Gasoline Taxes

(a) Each month the comptroller, after making the deductions for refund purposes, shall determine as accurately as possible the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, and on which refund of the tax has not been made and against which limitation has run for filing claim for refund of the tax. From the number of gallons so determined the comptroller shall compute the amount of taxes that would have been refunded under the law had refund claims been filed in accordance with the law.

(b) The comptroller shall allocate and deposit these unclaimed refunds as follows:

(1) 25 percent of the revenues based on unclaimed refunds of taxes paid on motor fuel used in motorboats shall be deposited to the credit of the available school fund; and

(2) the remaining 75 percent of the revenue shall be deposited to the credit of the game, fish, and water safety fund. (Title 122A, Art. 9.120(2); Art. 9.13, as amended by Acts 66th Legis., Reg.Sess., Ch. 260, Sec. 5 (part).)

Sec. 153.503. Allocation of Gasoline Tax

(a) Each month the comptroller, after making all deductions for refund purposes and for the funds derived from unclaimed refunds, shall allocate the net remainder of the taxes collected under Subchapter B of this chapter as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of $7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of

monthly allocations, which sum shall be used by the State Department of Highways and Public Transportation for the construction and improvement of farm-to-market roads; except that one-half of the amount may be used for the maintenance of farm-to-market roads during a fiscal year for which at least $15 million is appropriated for the construction of farm-to-market roads from the allocations derived from the tax clearance fund to the farm-to-market road fund.

(b) All receipts due the available school fund which are in the highway motor fuel tax fund on August 31 of each fiscal year shall be credited to the available school fund on August 31 of each fiscal year. (Title 122A, Arts. 9.120(3), (4).)

Sec. 153.504. Allocation of Diesel Fuel Tax

Each month the comptroller, after making deductions for refund purposes, and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter D of this chapter as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund. (Title 122A, Art. 9.313(2).)

Sec. 153.505. Allocation of Liquefied Gas Tax

Each month the comptroller, after making deductions for refund purposes and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter B of this chapter, in the proportions as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund. (Title 122A, Art. 9.224(2).)

CHAPTER 154. CIGARETTE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Section

154.001. Definitions

[Sections 154.002–154.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND RATE OF TAX

154.021. Imposition and Rate of Tax
154.022. First Sale
154.023. Impact of Tax
154.024. Importation of Small Quantities

[Sections 154.025–154.040 reserved for expansion]

SUBCHAPTER C. TAX STAMPS AND METERS

154.041. Stamp Required
154.042. Distributor
154.043. Sale of Stamps
154.044. Purchase From a Distributor
154.045. Recall by Comptroller
154.046. Invoice for Stamps

SUBCHAPTER C. TAX STAMPS AND METERS—Continued

Section
154.047. Stamps Shipped With Draft Attached
154.048. Stamp Meters
154.049. Meter Settings
154.050. Payment
154.051. Payment Bond
154.052. Distributor's Discount
154.053. Manufacture of Stamps
154.054. Redemption of Stamps
154.055. Exchange
154.056. Refunds
154.057. Obsolete Stamps
154.058. Inventory if Denomination Changes
154.059. Denomination Change
154.060. Cancellation

[Sections 154.061–154.100 reserved for expansion]

SUBCHAPTER D. PERMITS

154.101. Permits
154.102. Solicitor's Permit
154.103. Distributing Agent's Permit
154.104. Issuance of Distributing Agent's Permit
154.105. Forms
154.106. Application for a Distributor's Permit
154.107. Distributor's Permit Denied
154.108. Exception for Personal Use
154.109. Application for Wholesale or Retail Dealer's Permit
154.110. Issuance of Permits
154.111. Licensing Year; Fees
154.112. Additional Fees
154.113. Permit for More Than a Year
154.114. Suspension or Revocation of a Permit
154.115. Permit Required
154.116. Treasurer May Refuse to Sell Stamps
154.117. Display of Permit
154.118. Additional Permits
154.119. Unexpired Permit
154.120. Vending Machine, Train, Vehicle
154.121. Revenue

[Sections 154.122–154.150 reserved for expansion]

SUBCHAPTER E. INTERSTATE BUSINESS

154.151. Comptroller
154.152. Interstate Stock
154.153. Additional Bond

[Sections 154.154–154.200 reserved for expansion]

SUBCHAPTER F. RECORDS AND REPORTS

Section
154.201. Record of Cigarettes
154.202. Record of Stamps
154.203. Report of Sale or Use
154.204. Interstate Business
154.205. Salesman
154.206. Solicitor
154.207. Carrier
154.208. Distributing Agent
154.209. Availability of Records
154.210. Distributor's Report
154.211. Solicitor's Report
154.212. Distributing Agent's Report

[Sections 154.213–154.300 reserved for expansion]

SUBCHAPTER G. ADMINISTRATION BY COMPTROLLER AND TREASURER

154.301. Audits
154.302. Payment of Double Amount
154.303. Supervision of Stamp Procurement
154.304. Inspection
154.305. Refund for Damaged Stamps
154.306. Exchange of Stamps
154.307. Records
154.308. Information Confidential

[Sections 154.309–154.400 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT OF TAX

154.401. Evidence
154.402. Venue
154.403. Seizure
154.404. Comptroller's Report
154.405. Forfeiture Proceeding
154.406. Sale by Sheriff
154.407. Sale by Comptroller
154.408. Summary Proceeding
154.409. Unstamped Cigarettes
154.410. Seizure or Sale No Defense
154.411. Waiver Permitted
154.412. Payment to Treasury
154.413. State Tax Lien
154.414. Property Included

[Sections 154.415–154.500 reserved for expansion]

SUBCHAPTER I. PENALTIES

154.501. Penalties
154.502. Unstamped Cigarettes
154.503. Possession in Quantities Less Than 10,000
154.504. Possession of Quantities Less Than Individual Package

SUBCHAPTER I. PENALTIES—Continued

Section
154.505. Cancellation of Stamp
154.506. Concealment of a Violation
154.507. Misleading the Comptroller
154.508. Refusing to Surrender Cigarettes
154.509. Permits
154.510. Misdemeanor
154.511. Transportation of Cigarettes
154.512. Inspection of Premises
154.513. Previously Used or Old Design Stamps
154.514. Sale of Stamps
154.515. Possession in Quantities of 10,000 or More
154.516. Books and Records
154.517. Felony
154.518. Overlap of Penalties
154.519. Venue
154.520. Counterfeit Stamps
154.521. Disclosure of Records

[Sections 154.522–154.600 reserved for expansion]

SUBCHAPTER J. NATURE OF TAX AND DISPOSITION OF FUNDS

154.601. Nature of Tax
154.602. Enforcement Fund
154.603. Disposition of Revenue

CHAPTER 154. CIGARETTE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.001. Definitions

In this chapter:

(1) "Cigarette" means a roll for smoking made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco, but does not include a cigar.

(2) "Individual package of cigarettes" means:

(A) the smallest package of cigarettes ordinarily sold at retail; or

(B) any size package of cigarettes taxed by the United States.

(3) "Place of business" means:

(A) a place where cigarettes are sold;

(B) a place where cigarettes are stored or kept for sale or consumption; or

(C) a vehicle, train, or vending machine if cigarettes are sold from the vehicle, train, or vending machine.

(4) "Stamp" means a stamp that is printed, manufactured, or made by authority of the comptroller; issued, sold, or circulated by the treasurer; and used to show payment of a tax imposed by this chapter.

(5) "Counterfeit stamp" means a stamp, label, print, tag, or token that is not authorized by the comptroller or not issued by the treasurer, but is used to show payment of a tax imposed by this chapter.

(6) "Previously used stamp" means a stamp that has been used to show payment of a tax imposed by this chapter and is again used, sold, or possessed to sell or use, to show payment of a tax imposed by this chapter.

(7) "First sale" means:

(A) the first sale or distribution of cigarettes in intrastate commerce;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(8) "Drop shipment" means a delivery of cigarettes received by a person in this state if payment for the cigarettes is made to the shipper or seller by a person other than the consignee.

(9) "Distributor" means a person in this state who:

(A) manufactures or produces cigarettes;

(B) ships, transports, imports into this state, or acquires or possesses cigarettes and makes a first sale of the cigarettes in this state; or

(C) is authorized to purchase on open account unstamped cigarettes direct from all manufacturers who have general distribution of cigarettes in this state and:

(i) sells cigarettes to licensed wholesalers; or

(ii) acquires or possesses unstamped cigarettes to make a first sale in this state.

(10) "Wholesale dealer" means a person, other than a distributor or a salesman who is employed by a manufacturer handling only the products of the salesman's employer, who sells or distributes cigarettes in this state for resale.

(11) "Retail dealer" means:

(A) a person, other than a distributor or wholesale dealer, who sells or distributes cigarettes, offers them for sale or distribution, or possesses them for the purpose of sale or distribution;

(B) a person, other than a distributor or wholesale dealer, who distributes or disposes of cigarettes in unbroken individual packages or in quantities of 10 or more if no sale is involved; or

(C) a coin-operated cigarette or tobacco products vending machine.

(12) "Distributing agent" means a person in this state who is an agent of a person outside this state, receives cigarettes in interstate commerce, and stores the cigarettes for distribution or delivery to distributors, wholesale dealers, and retail dealers upon orders from the person outside this state.

(13) "Solicitor" means an individual who offers cigarettes for sale in this state for delivery in this state for any person's account. (Title 122A, Art. 7.01, Secs. (1), (2), (4), (5), (6), (7), (8), (9), (13), (14), (15), (16); Art. 7.14, Sec. (5) (part); Art. 7.16, Sec. (1) (part).)

[Sections 154.002–154.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND RATE OF TAX

Sec. 154.021. Imposition and Rate of Tax

(a) A tax is imposed on a person who uses or disposes of cigarettes in this state.

(b) The tax rates are:

(1) $9.25 per thousand on cigarettes weighing three pounds or less per thousand; and

(2) $11.35 per thousand on cigarettes weighing more than three pounds per thousand. (Title 122A, Art. 7.02, Sec. (1) (part); Art. 7.06, Sec. (1) (part).)

Sec. 154.022. First Sale

The cigarette tax is imposed and becomes due and payable when a person in this state receives cigarettes to make a first sale. (Title 122A, Art. 7.02, Sec. (1) (part); Art. 7.06, Sec. (1) (part).)

Sec. 154.023. Impact of Tax

The ultimate consumer or user in this state bears the impact of the tax imposed by this chapter. If another person pays the tax, the amount of the tax is added to the price to the ultimate consumer or user. (Title 122A, Art. 7.02, Sec. (3).)

Sec. 154.024. Importation of Small Quantities

(a) A person who imports and personally transports 200 or fewer cigarettes into this state is not required to pay the tax imposed by this chapter if the person uses the cigarettes and does not sell them or offer them for sale.

(b) Employees of the Texas Alcoholic Beverage Commission who collect taxes on alcoholic beverages at ports of entry shall collect at the ports of entry the tax imposed by this chapter on cigarettes imported into this state.

(c) The comptroller and the Texas Alcoholic Beverage Commission shall make rules for the administration of this section. (Title 122A, Art. 7.02, Sec. (1) (part); Art. 7.06, Sec. (1) (part); Art. 7.061.)

[Sections 154.025–154.040 reserved for expansion]

SUBCHAPTER C. TAX STAMPS AND METERS

Sec. 154.041. Stamp Required

(a) A person who pays a tax imposed by this chapter shall securely affix a stamp to each individual package of cigarettes to show payment of the tax.

(b) Each person, other than a distributing agent, bonded distributor, or common carrier, shall obtain the necessary stamps before receiving or accepting delivery of unstamped cigarettes. The possession of unstamped cigarettes without the possession of the requisite amount or number of stamps is prima facie evidence that the cigarettes are possessed for the purpose of making a first sale without stamps and without payment of a tax imposed by this chapter.

(c) The absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(d) A manufacturer of cigarettes outside this state may purchase a stamp and affix it to the individual package and no further payment of the tax is required.

(e) A stamp is not required on a sample package that contains five or fewer cigarettes if the manufacturer reports the tax and pays it directly to the state. (Title 122A, Art. 7.02, Sec. (2) (part); Art. 7.06, Sec. (2) (part); Art. 7.10 (part); Art. 7.29, Sec. (1) (part).)

Sec. 154.042. Distributor

(a) A distributor shall affix the required tax stamps to each individual package that is to be sold, offered for sale, consumed, distributed, handled, or transported.

(b) Each distributor in this state shall affix the required stamps within 96 hours after receiving the cigarettes, excluding Saturdays, Sundays, and legal holidays. (Title 122A, Art. 7.08, Sec. (2) (part); Art. 7.-10 (part).)

Sec. 154.043. Sale of Stamps

Except as provided in Section 154.044 of this code, only the treasurer may sell cigarette stamps. The stamps may be sold only in unbroken sheets of 100. The purchaser shall send the order for stamps directly to the treasurer. (Title 122A, Art. 7.02, Sec. (2) (part); Art. 7.05 (part); Art. 7.06, Sec. (2) (part); Art. 7.08, Sec. (6) (part); Art. 7.10 (part).)

Sec. 154.044. Purchase From a Distributor

(a) If a distributor does not possess sufficient unused stamps to cover the distributor's inventory of unstamped cigarettes, the comptroller may allow the distributor to purchase the required stamps from any distributor through a requisition from the comptroller so that the unstamped cigarettes may be stamped immediately under the direction of the comptroller.

(b) The comptroller may issue the requisition. The requisition shall be in triplicate on a form prescribed by the comptroller. The copies shall be designated "original," "duplicate," and "triplicate." The comptroller shall keep the original and send the duplicate to the purchaser and the triplicate to the seller. The purchaser and seller shall keep their respective copies available at all times for two years for inspection by the comptroller and the attorney general. (Title 122A, Art. 7.05 (part).)

Sec. 154.045. Recall by Comptroller

(a) The comptroller may recall unused stamps that have been sold by the treasurer.

(b) If the comptroller recalls stamps, the purchaser, on the comptroller's demand, shall surrender the stamps to the treasurer for exchange.

(c) If the comptroller recalls stamps and the treasurer receives them from the purchaser, the treasurer shall issue stamps with different serial numbers for the recalled stamps. (Title 122A, Art. 7.05 (part).)

Sec. 154.046. Invoice for Stamps

(a) The treasurer shall send an invoice for stamps to the purchaser.

(b) The treasurer shall prescribe the form of the invoice.

(c) The invoice shall be issued in triplicate and numbered consecutively. The invoice must show:

(1) the date of sale;
(2) the name and address of the purchaser;
(3) the number of stamps;
(4) the serial numbers of the stamps; and
(5) the denomination and value of the stamps.

(d) The treasurer shall sign the invoice and send the original and the stamps to the purchaser. The treasurer shall keep a copy of the invoice and send a copy to the comptroller.

(e) The purchaser shall have the original invoice available at all times for two years for inspection by the comptroller and the attorney general. (Title 122A, Art. 7.08, Sec. (6) (part).)

Sec. 154.047. Stamps Shipped With Draft Attached

(a) A distributor may order stamps to be shipped to a bank with which the distributor regularly transacts business if the bank is authorized to do business under the laws of this state and the United States. The treasurer may ship the stamps to the bank with the invoice required by Section 154.046 of this code and a form draft.

(b) The state auditor shall prescribe the form of the draft. The draft must show:

(1) the amount of the draft;
(2) the name of the distributor;
(3) the name and address of the bank; and
(4) the date of shipment.

(c) If the draft is not paid within 20 days after the date of the draft, the bank shall return the draft and stamps to the treasurer. The treasurer shall notify the distributor to appear before the treasurer to show cause why the distributor should not be denied the privilege of ordering stamps shipped with draft attached. If the distributor fails to show good cause, the treasurer may stop shipping stamps with draft attached. (Title 122A, Art. 7.08, Sec. (8).)

Sec. 154.048. Stamp meters

(a) The comptroller may authorize a licensed distributor to use a stamp metering machine to impress on or to attach to each package of cigarettes evidence of tax payment. The Comptroller shall adopt rules for the use of tax meter stamps.

(b) No distributor may use a tax meter stamp without authorization from the comptroller. The comptroller may revoke or suspend without prior notice authorization to use tax meter stamps. (Title 122A, Art. 7.07 (part).)

Sec. 154.049. Meter Settings

A distributor using a stamp metering machine shall submit a request for a setting on a form furnished by the treasurer. The distributor shall at his own expense send the meter with the proper payment to the treasurer. The treasurer shall set and return the meter, with insurance and shipping cost collect on delivery. The treasurer shall keep the key to the meter. Only the treasurer may remove or break the seal on the meter. A distributor may request meter settings only in units of 100. No distributor may request a meter setting of more than 99,900. (Title 122A, Art. 7.-07 (part).)

Sec. 154.050. Payment

(a) The treasurer shall require that payment in full for stamps or meter settings be made within 15 days after the date stamps or a set meter are received by the distributor. When the treasurer receives the order for stamps or a meter setting, the treasurer shall ship the stamps or the set meter with a certified statement showing the amount due. The distributor shall forward payment in full within 15 days after the date the stamps or set meter and certified statement are received.

(b) The treasurer may not ship stamps or set a meter without advance payment under this section unless the distributor has filed the bond provided for in Section 154.051 of this code. (Title 122A, Art. 7.08, Sec. (9) (part).)

Sec. 154.051. Payment Bond

(a) A distributor may file a surety bond, approved by the treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on timely payment in full for stamps or a meter setting. The treasurer shall set the amount of the bond at 1½ times the amount of stamps and meter setting requested by the distributor and approved by the treasurer to be purchased for the following month. The treasurer shall accept payment by a company check or by a personal check of a bonded distributor.

(b) If a bonded distributor fails to pay in full by the due date, the treasurer shall notify the distributor within five days after the due date to appear before the treasurer to show cause why the treasurer should not deny the distributor the privilege of ordering stamps without advance payment. If a distributor fails to show good cause, the treasurer may discontinue shipping stamps or setting meters without advance payment and may enforce payment of the bond. (Title 122A, Art. 7.08, Sec. (9) (part).)

Sec. 154.052. Distributor's Discount

(a) A licensed distributor is entitled to a discount of 2.75 percent of the face value of stamps purchased, except that an out-of-state purchaser residing in a state that does not give a discount on cigarette tax stamps purchased by a cigarette distributor residing in this state may not purchase stamps at a discount as provided by this section.

(b) If a distributor violates a provision of this chapter, the distributor shall pay the full face value for stamps purchased during the period of the offense. The comptroller shall send the treasurer an affidavit setting forth a violation, and the treasurer shall refuse to supply stamps at the discount until the distributor has paid any unauthorized discounts and has satisfied the comptroller that the distributor is not in violation of a provision of this chapter. (Title 122A, Art. 7.08, Sec. (2) (part).)

Sec. 154.053. Manufacture of Stamps

(a) The comptroller shall design and have printed or manufactured cigarette tax stamps. If the comptroller determines that it is necessary for the best enforcement of this chapter, the comptroller may change the design of the stamps. The comptroller shall determine the size, denomination, and quantity of stamps manufactured. The stamps shall be manufactured so that they may be easily and securely attached to an individual package of cigarettes. The comptroller may designate the method of identification for the stamps. The comptroller shall award the contract for the printing or manufacturing to the person submitting the lowest and best bid that will give the best protection to the state in enforcing this chapter.

(b) When the treasurer receives a new design of stamps authorized by the comptroller, the treasurer shall designate the date of issue of the new stamps by issuing a proclamation. The date of the proclamation is the date of issue. (Title 122A, Art. 7.08, Secs. (1), (2) (part), (4) (part).)

Sec. 154.054. Redemption of Stamps

(a) The treasurer shall redeem unused cigarette tax stamps that were lawfully issued before a design or denomination change. Except as provided by Subsection (c) of this section, the treasurer shall exchange old stamps for new stamps at face value.

(b) If a design or denomination change is made, a person who has stamps of the old design or denomination shall send the stamps to the treasurer for exchange. In the case of a design change, the person shall send the stamps within 60 days after the date of issue. In the case of a denomination change, the person shall send the stamps within 60 days after the effective date of a tax increase.

(c) The treasurer may not exchange any stamps unless the treasurer is satisfied that the stamps were properly purchased and paid for by the person exchanging the stamps. The treasurer may refuse to exchange stamps that are effaced or mutilated.

(d) A stamp not exchanged within the 60-day period provided for in this section is void.

(e) Cigarettes stamped with an old design stamp more than 60 days after the date of a new design are unstamped cigarettes.

(f) Stamps of an old denomination removed from cigarettes determined by the comptroller to be unsalable may be redeemed under rules made by the comptroller. (Title 122A, Art. 7.08, Secs. (3) (part), (4) (part), (5) (part).)

Sec. 154.055. Exchange

The treasurer shall exchange stamps in unbroken sheets of 100 for stamps of a different denomination. (Title 122A, Art. 7.08, Sec. (7) (part).)

Sec. 154.056. Refunds

The treasurer may make refunds on unused stamps in unbroken sheets of 100. The treasurer may not make a refund unless the treasurer is satisfied that the stamps were properly purchased and paid for by the person requesting the refund. The treasurer shall make the refund from revenue collected under this chapter before the revenue is allocated. (Title 122A, Art. 7.08, Sec. (7) (part).)

Sec. 154.057. Obsolete Stamps

The comptroller has authority over obsolete stamps. The comptroller shall burn obsolete stamps. (Title 122A, Art. 7.08, Sec. (7) (part).)

Sec. 154.058. Inventory if Denomination Changes

On the effective date of a tax increase, a retail or wholesale dealer who has 2,000 or more cigarettes stamped with stamps of an old denomination shall immediately inventory the packages and file a report of the inventory with the comptroller. The dealer shall attach to the inventory a cashier's check payable to the treasurer equal to the amount of additional tax due because of the tax increase. The dealer shall keep a copy of the inventory and the purchaser's copy of the cashier's check. (Title 122A, Art. 7.08, Sec. (3) (part).)

Sec. 154.059. Denomination Change

No person may, 60 days after a tax increase:

(1) possess stamps of an old denomination; or

(2) sell, offer for sale, or possess for the purpose of sale cigarettes stamped with stamps of an old denomination. (Title 122A, Art. 7.08, Sec. (3) (part).)

Sec. 154.060. Cancellation

No person may cancel, mark, or mutilate a stamp on a package of cigarettes so that the comptroller is prevented from or hindered in examining the genuineness of the stamp. (Title 122A, Art. 7.08, Sec. (6) (part).)

[Sections 154.061–154.100 reserved for expansion]

SUBCHAPTER D. PERMITS

Sec. 154.101. Permits

(a) A person may not engage in business as a distributor, wholesale dealer, or retail dealer unless the person has applied for and received the applicable permit from the comptroller.

(b) A distributor, wholesale dealer, and retail dealer shall obtain a permit for each place of business owned or operated by the distributor, wholesale dealer, or retail dealer. (Title 122A, Art. 7.09, Secs. (1) (part), (2) (part), (6) (part).)

Sec. 154.102. Solicitor's Permit

(a) A person may not engage in business as a solicitor unless the person has applied for and received a solicitor's permit from the comptroller.

(b) A solicitor's permit must set forth the name and address of the vendors and employers the solicitor represents. The solicitor may not represent a vendor or employer whose name is not on the permit. (Title 122A, Art. 7.16, Sec. (1) (part).)

Sec. 154.103. Distributing Agent's Permit

(a) A person may not engage in business as a distributing agent unless the person has applied for and received a distributing agent's permit from the comptroller.

(b) The comptroller shall furnish the application form for the permit if the applicant makes a written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(c) The application must include:

(1) the name under which the distributing agent will do business;

(2) the address of the principal office and place of business in this state to which the permit applies;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses; and

(4) any other information the comptroller requests.

(d) A distributing agent shall obtain a permit for each place of business owned or operated by the distributing agent. (Title 122A, Art. 7.23, Sec. (1) (part).)

Sec. 154.104. Issuance of Distributing Agent's Permit

(a) The comptroller shall issue a permit to a distributing agent for a designated place of business if the comptroller has received the application and fee.

(b) The permits are nonassignable and consecutively numbered.

(c) The distribution or delivery of cigarettes by a distributing agent to a licensed distributor in this state under instructions received from outside this state is not a first sale. (Title 122A, Art. 7.23, Sec. (1) (part).)

Sec. 154.105. Forms

The comptroller shall prescribe the form for an application for a permit to be a wholesale dealer, retail dealer, distributor, or distributing agent. (Title 122A, Art. 7.09, Secs. (2) (part), (5) (part); Art. 7.23, Sec. (1) (part).)

Sec. 154.106. Application for a Distributor's Permit

(a) The comptroller may direct a distributor to file an application at any time. The applicant shall accurately set forth the information re-

quired on the application. The comptroller may require, either on the application or in a supplement, information about the applicant that the comptroller believes is necessary to determine whether the applicant may receive a permit.

(b) If the applicant is a corporation, association, joint venture, syndicate, partnership, or proprietorship, the comptroller may require each officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, member, owner, and managing employee to furnish information as provided for in this section. (Title 122A, Art. 7.09, Sec. (2) (part).)

Sec. 154.107. Distributor's Permit Denied

The comptroller may reject an application and deny a distributor's permit if the comptroller after notice and opportunity for hearing finds that:

(1) the premises where business will be conducted are not adequate to protect the revenue; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or if the applicant is a partnership, a partner or manager:

(A) is, because of business experience, financial standing, trade connections, previous business affiliation, prior employment, or prior conviction of a felony, not likely to comply with the provisions of this chapter; or

(B) has failed to disclose any required material information or has made a material false statement in the application. (Title 122A, Art. 7.09, Sec. (2) (part).)

Sec. 154.108. Exception for Personal Use

If a distributor acquires cigarettes for personal use or consumption and not for sale, gift, or other disposition:

(1) the distributor is not required to have a distributor's permit, but shall comply with all other provisions of this chapter; and

(2) the treasurer may sell stamps to the distributor in quantities of less than unbroken sheets of 100. (Title 122A, Art. 7.09, Sec. (6) (part).)

Sec. 154.109. Application for Wholesale or Retail Dealer's Permit

(a) The comptroller shall furnish the application form to an applicant on the applicant's written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(b) The application must include:

(1) the manner in which the applicant will do business;

(2) the applicant's principal office, residence, and place of business in Texas to which the permit is to apply;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses, not to exceed three; and

(4) any other information the comptroller requests. (Title 122A, Art. 7.09, Sec. (5) (part).)

Sec. 154.110. Issuance of Permits

(a) The comptroller shall issue a permit to a distributor, wholesale dealer, or retail dealer if the comptroller:

(1) has received the application and fee;

(2) believes that the applicant has complied with the conditions of issuance; and

(3) determines that issuing the permit will not jeopardize the revenue.

(b) The permit shall be issued for a designated place of business.

(c) The permits are nonassignable and shall be consecutively numbered. The permit must show the kind of permit and authorize the sale of cigarettes in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or reasonable rules of the comptroller are violated. (Title 122A, Art. 7.09, Sec. (7) (part).)

Sec. 154.111. Licensing Year; Fees

(a) A permit required by this chapter expires on the last day of February of each year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) $100 for a distributing agent's permit;
(2) $25 for a distributor's permit;
(3) $15 for a wholesale dealer's permit;
(4) $5 for a retail dealer's permit; and
(5) $1 for a solicitor's permit.

(c) The comptroller shall prorate the fee for a new or renewal permit required by Section 154.101 or 154.103 of this code by allowing a discount computed by quarters of the licensing year. (Title 122A, Art. 7.09, Secs. (1) (part), (6) (part); Art. 7.16, Sec. (1) (part); Art. 7.23, Secs. (1) (part), (5).)

Sec. 154.112. Additional Fees

(a) A person who is required by this chapter to have a permit and who does not obtain a renewal permit before the beginning of the licensing year shall pay a late application fee of $1 to the comptroller at the time the person pays the permit fee.

(b) If the comptroller must visit a permit holder to collect a permit fee due under this chapter, the permit holder shall pay a service fee of $5 in addition to the permit fee. (Title 122A, Art. 7.23, Secs. (6), (7).)

Sec. 154.113. Permit for More Than a Year

If a permit expires within three months after the date of issuance or renewal, the comptroller, with the consent of the permit holder, may collect the discounted permit fee or the fee for a current permit plus a fee for the next licensing year and issue a permit or permits for both periods. (Title 122A, Art. 7.23, Sec. (8).)

Sec. 154.114. Suspension or Revocation of a Permit

(a) The comptroller shall give notice to a person at the place of business named in the application for a permit to show cause why a permit should not be suspended or revoked if the comptroller believes that:

(1) a distributor, wholesale dealer, or retail dealer:

(A) has engaged in any activity that endangers the revenue;

(B) has not maintained the premises to protect the revenue; or

(C) has not notified the comptroller of a business change affecting ownership, operation, or control;

(2) a distributing agent, distributor, wholesale dealer, or retail dealer:

(A) has violated a provision of this chapter; or

(B) has violated a rule made under this chapter;

(3) a wholesale dealer or retail dealer fails to make the inventory required by Section 154.058 of this code; or

(4) a solicitor does not make the report required by Section 154.-211 of this code.

(b) If the person does not show cause, the comptroller shall revoke the permit or suspend it for a period to be determined by the comptroller. (Title 122A, Art. 7.08, Sec. (3) (part); Art. 7.09, Secs. (3) (part), (4) (part); Art. 7.16, Sec. (1) (part); Art. 7.21 (part).)

Sec. 154.115. Permit Required

(a) If a permit issued under this chapter is revoked or suspended, the person may not sell cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(b) Except at the comptroller's discretion, if a permit is revoked the person may not receive a new permit within one year after the date of the revocation. (Title 122A, Art. 7.09, Sec. (7) (part); Art. 7.16, Sec. (1) (part); Art. 7.21 (part).)

Sec. 154.116. Treasurer May Refuse to Sell Stamps

The treasurer may refuse to sell stamps to a person who has not obtained a distributor's permit or to a distributor who does not have a valid permit. (Title 122A, Art. 7.09, Sec. (7) (part).)

Sec. 154.117. Display of Permit

A person who has a permit required by Section 154.101 of this code shall keep the permit on public display at the place of business of the person to whom it is issued. (Title 122A, Art. 7.09, Sec. (8) (part).)

Sec. 154.118. Additional Permits

(a) If a person operates as a distributor and a wholesale dealer in the same place of business, the person shall obtain only a distributor's permit for the place of business.

(b) If a distributor or wholesale dealer sells cigarettes wholesale and retail, the distributor or wholesale dealer shall obtain a retail dealer's permit in addition to the distributor's permit or wholesale dealer's permit. (Title 122A, Art. 7.09, Sec. (8) (part).)

Sec. 154.119. Unexpired Permit

A person who has a permit that is required by Section 154.101 of this code and that is unexpired may return the permit to the comptroller for credit on the unexpired portion for the purchase of a permit of a higher classification. (Title 122A, Art. 7.09, Sec. (8) (part).)

Sec. 154.120. Vending Machine, Train, Vehicle

If a distributor, wholesale dealer, or retail dealer applies for a permit to sell cigarettes from a vending machine, train, or vehicle, the applicant must show on the application:

(1) the serial number of the vending machine;

(2) the make, motor number, and license number of the vehicle; or

(3) the number of the train and the name of the railway company. (Title 122A, Art. 7.09, Sec. (9).)

Sec. 154.121. Revenue

Revenue from the sale of permits to distributors, wholesale dealers, and retail dealers is allocated in the same manner as other revenue is allocated by Subchapter J of this chapter. (Title 122A, Art. 7.22.)

[Sections 154.122–154.150 reserved for expansion]

SUBCHAPTER E. INTERSTATE BUSINESS

Sec. 154.151. Comptroller

The comptroller may make rules to regulate the sale of cigarettes that are for movement into a state adjoining this state and that are stamped with the tax stamps of the adjoining state. (Title 122A, Art. 7.12.)

Sec. 154.152. Interstate Stock

(a) If a person executes and files with the comptroller a good and sufficient surety bond signed by the person and a good and sufficient surety company or companies authorized to do business in this state, the person may set aside unstamped cigarettes for interstate business. The person shall keep the interstate stock in a separate part of the building from the stamped stock. If the person does not keep the interstate stock separate, the stock shall be considered intrastate stock and be subject to the same requirements as cigarettes possessed for the purpose of a first sale.

(b) The bond shall be payable to the state in Austin, Travis County, and conditioned upon full and faithful performance of the requirements of this chapter. The comptroller, with the approval of the attorney general, shall prescribe the form of the bond.

(c) The bond shall be approved by and acceptable to the comptroller. The comptroller shall set the amount of the bond at not less than $250 nor more than double the amount necessary to stamp the largest quantity of cigarettes set aside at any time.

(d) If a person sets aside more cigarettes than permitted under the bond, the cigarettes are subject to the same requirements as cigarettes in intrastate commerce. (Title 122A, Art. 7.11 (part).)

Sec. 154.153. Additional Bond

The comptroller shall require an additional or new bond if an existing bond becomes insufficient or a surety becomes unsatisfactory. The person shall supply the additional or new bond within 10 days after the date of the demand, and if the person refuses, the comptroller may cancel any existing bond made by the person. If the comptroller cancels a bond, the person, within 48 hours after cancellation, excluding Sundays and legal holidays, shall affix the appropriate stamps to cigarettes received before the cancellation. (Title 122A, Art. 7.11 (part).)

[Sections 154.154–154.200 reserved for expansion]

SUBCHAPTER F. RECORDS AND REPORTS

Sec. 154.201. Record of Cigarettes

(a) A distributor, wholesale dealer, or retail dealer shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record of cigarettes purchased and of cigarettes received. The record must include all invoices, bills of lading, waybills, freight bills, express receipts or copies of express receipts, and any shipping records furnished by the carrier and the seller or shipper.

(b) A distributor, wholesale dealer, or retail dealer shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record in a well-bound book that provides complete information on cigarettes purchased and on cigarettes received. The record book must show:

(1) the date cigarettes were received;

(2) whether the cigarettes were drop-shipped or otherwise;

(3) the name and address of the seller and the shipper;

(4) the place from which the cigarettes were shipped or delivered;

(5) the place where the cigarettes were received;

(6) the name of the carrier;

(7) whether or not the cigarettes were shipped by common carrier;

(8) the name of the boat or barge if shipped by water;

(9) if received by mail, whether sent registered mail, insured parcel post, or ordinary mail;

(10) the number and kind of stamped cigarettes received;

(11) if received by a distributor, the number and kind of unstamped cigarettes;

(12) if a distributor, an inventory made on the first of each month showing the number and kind of stamped cigarettes on hand; and

(13) if a distributor, an inventory made on the first of each month showing the number and kind of unstamped cigarettes on hand. (Title 122A, Art. 7.13, Sec. (1) (part).)

Sec. 154.202. Record of Stamps

(a) A distributor shall keep at each place of business in this state, except as provided by Section 154.209 of this code, the invoice of stamps purchased or received from the treasurer and a record in a well-bound book that provides complete information on stamps purchased and the disposition of the stamps.

(b) The record book must show:

(1) the date of receipt of stamps purchased;

(2) the number or quantity of stamps purchased;

(3) the denomination of stamps purchased;

(4) the amount paid for the stamps;

(5) if stamps were sold pursuant to Section 154.044 of this code, the name of the purchaser, the number or quantity of stamps, and the denomination and face value of the stamps;

(6) the number or quantity of and the denomination and face value of stamps sent to or received from the treasurer as an exchange; and

(7) the inventory of stamps on hand on the first day of each month, showing the number or quantity, denomination, and face value of the stamps. (Title 122A, Art. 7.14, Sec. (1) (part).)

Sec. 154.203. Report of Sale or Use

(a) A distributor or wholesale dealer shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record of each sale, distribution, or use of cigarettes whether taxed under this chapter or not. The record shall be kept on an invoice supplied by the distributor or wholesale dealer. The invoice shall be supported by the receipts and records furnished by the carrier. The invoice shall be issued in duplicate, unless the sale or distribution is made by drop shipment, in which case the invoice shall be issued in triplicate. The original invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer. If cigarettes are distributed or exchanged in a manner other than a sale, the invoice must explain the transaction. If a distributor or wholesale dealer sells cigarettes at retail, the distributor or wholesale dealer shall issue an invoice to the retail department for cigarettes to be sold at retail, and the distributor or whole-

sale dealer shall keep the stock invoiced for retail sale separated from other stock.

(b) A distributor or wholesale dealer shall keep at each place of business in this state a record in a well-bound book of all cigarettes sold, distributed, or used by the distributor or wholesale dealer.

(c) The invoice and record book must show for each sale, distribution, or use of cigarettes:

(1) the date of sale, the distribution, or use;

(2) the purchaser's name and address;

(3) the means of delivery;

(4) if delivered by common carrier, the name of the carrier;

(5) if delivered by mail, whether by registered mail, insured parcel post, or ordinary mail;

(6) the designation of drop shipment if the sale is a drop shipment by a distributor;

(7) the number and kind of cigarettes sold;

(8) if the sale is by a distributor, the number and kind of stamped cigarettes; and

(9) if the sale is by a distributor, the number and kind of unstamped cigarettes. (Title 122A, Art. 7.14, Sec. (2) (part).)

Sec. 154.204. Interstate Business

If a person sells cigarettes in interstate commerce only, the person shall keep the same type of records and make the same type of reports that are required of a distributor. (Title 122A, Art. 7.14, Sec. (3).)

Sec. 154.205. Salesman

A salesman who is employed by a manufacturer, who handles only the product of the employer, and who sells or distributes stamped cigarettes in this state for resale shall keep the same records that are required of a wholesale dealer. The salesman shall deliver the original of the invoice required by Section 154.203 of this code to the purchaser or recipient of the cigarettes. (Title 122A, Art. 7.14, Sec. (4) (part).)

Sec. 154.206. Solicitor

(a) A solicitor shall keep in this state a record of orders solicited and orders taken for cigarettes. The record must show:

(1) the quantity and kind of cigarettes ordered or shipped;

(2) the name of the person from whom the cigarettes were ordered or by whom the cigarettes are shipped;

(3) the name and address of the purchaser;

(4) the date the cigarettes were ordered; and

(5) if available, the date the cigarettes were shipped.

(b) If a solicitor is given credit for or furnished records of an order or shipment shipped by the vendor the solicitor represents, the solicitor shall keep the record whether or not the solicitor took the order. (Title 122A, Art. 7.14, Sec. (5) (part).)

Sec. 154.207. Carrier

(a) A common or contract carrier that transports cigarettes in this state shall keep a record in this state of cigarettes handled or transported. The record must show for each transaction:

(1) the name of the consignor and consignee;

(2) the date of delivery; and

(3) the number or quantity of cigarettes transported or handled.

(b) The carrier shall keep the record required by this section, and all books or records in the custody of the carrier showing the shipment of

cigarettes, open at all times for inspection by the comptroller or the attorney general. The carrier shall allow the comptroller and the attorney general free access to books, records, and cigarettes in the carrier's custody. (Title 122A, Art. 7.28.)

Sec. 154.208. Distributing Agent

(a) A distributing agent shall keep at each place of business in this state a record of cigarettes received and a record of each distribution or delivery made by the distributing agent.

(b) The record of cigarettes received must include all:

(1) invoices;
(2) orders;
(3) bills of lading;
(4) waybills;
(5) freight bills;
(6) express receipts; and
(7) shipping records furnished by the carrier and shipper.

(c) A distributing agent may use a copy of a record required by Subsection (b) of this section.

(d) The record of distribution or delivery must include all:

(1) orders or copies of orders;
(2) invoices or copies of invoices; and
(3) shipping records furnished by the carrier and the person ordering the distribution or delivery. (Title 122A, Art. 7.23, Sec. (3) (part).)

Sec. 154.209. Availability of Records

(a) A person, other than a common carrier or a contract carrier, required by this subchapter to keep a record shall keep the record available at all times for two years for inspection by the comptroller and the attorney general.

(b) If a distributor's, wholesale dealer's, or retail dealer's place of business is a vending machine, train, or vehicle, the distributor, wholesale dealer, or retail dealer shall designate in the application for a permit a permanent place to keep the records. The distributor, wholesale dealer, or retail dealer shall keep the records in the designated place after the cigarettes are delivered from the vending machine, train, or vehicle. (Title 122A, Art. 7.13, Sec. (1) (part); Art. 7.14, Secs. (1) (part), (2) (part), (4) (part), (5) (part); Art. 7.20; Art. 7.23, Sec. (3) (part).)

Sec. 154.210. Distributor's Report

(a) A distributor shall deliver to the comptroller in Austin, on or before the 10th day of each month, a report for the preceding calendar month.

(b) The report must show:

(1) the date the report was made;
(2) the distributor's name and address;
(3) the month the report covers;
(4) the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month;
(5) the number of unstamped and the number of stamped cigarettes purchased and received during the month;
(6) the number of unstamped and the number of stamped cigarettes returned by customers or received from any other source;

(7) 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;

(8) the number of unstamped and the number of stamped cigarettes on hand at the end of the month;

(9) the number of cigarettes sold or distributed in interstate commerce;

(10) the number of cigarettes sold or distributed in intrastate commerce;

(11) the number, denomination, and face value of unused stamps on hand at the beginning of the month;

(12) the number, denomination, and face value of stamps purchased and received;

(13) the number, denomination, and face value of stamps sold, used, lost, stolen, exchanged, returned, or disposed of in any other manner;

(14) the number, denomination, and face value of stamps on hand at the end of the month; and

(15) all drop shipments handled by or through the distributor during the month, including the date of shipment, invoice number, name and address of the consignee, number and brand of cigarettes, and means of delivery.

(c) The distributor shall attach copies of invoices of drop shipments handled by or through the distributor during the month.

(d) The comptroller may furnish a form for the report, but a distributor's failure to obtain a form is not an excuse for failure to file a report. (Title 122A, Art. 7.17.)

Sec. 154.211. Solicitor's Report

(a) A solicitor shall file with the comptroller, on or before the fifth day of each month, a copy of each order solicited by him in this state during the preceding calendar month. The comptroller shall supply the forms.

(b) The copy must show:

(1) the quantity and kind of cigarettes ordered;

(2) the name of the person ordering the cigarettes;

(3) the name of the person that the cigarettes were ordered from;

(4) the name and address of the purchaser;

(5) the date the cigarettes were ordered; and

(6) any other information the comptroller requires. (Title 122A, Art. 7.16, Sec. (1) (part).)

Sec. 154.212. Distributing Agent's Report

(a) A distributing agent in this state shall report to the comptroller each day except Sundays and holidays all cigarette deliveries made by the distributing agent on the preceding day or days.

(b) The comptroller shall prescribe the form of the report, and the distributing agent shall furnish the form.

(c) The report must show:

(1) the name of the person ordering the delivery;

(2) the date of delivery;

(3) the name and address of the person to whom delivered;

(4) the invoice number;

(5) the bill of lading or waybill number;

(6) the number and kind of cigarettes delivered;

(7) the means of delivery;

(8) the transportation agent; and

(9) the designation of drop shipment if a drop shipment.

(d) If the invoice furnished to the distributing agent by the manufacturer or person ordering the delivery or the bill of lading prepared by the distributing agent to cover the shipment under the invoice contains the information required by this section, a copy of each invoice or bill of lading may be sent to the comptroller instead of the report. (Title 122A, Art. 7.23, Sec. (4).)

[Sections 154.213–154.300 reserved for expansion]

SUBCHAPTER G. ADMINISTRATION BY COMPTROLLER AND TREASURER

Sec. 154.301. Audits

(a) If a distributor fails to pay a tax or penalty in the proper manner when due as required by this chapter, the comptroller may employ a person to determine the amount due. If the distributor has not paid the tax or penalty, the distributor shall pay the reasonable expenses incurred for the investigation and audit as an additional penalty.

(b) The comptroller shall deposit funds paid in under this section to the credit of the general revenue fund. (Title 122A, Art. 7.15 (part).)

Sec. 154.302. Payment of Double Amount

(a) If the comptroller finds that a person has sold unstamped cigarettes, the comptroller may require the person to pay the state through the comptroller a sum equal to twice the amount of stamp tax due.

(b) If the person does not furnish the comptroller evidence that enough stamps were purchased to cover unstamped cigarettes purchased, it is presumed that the cigarettes were sold without the proper stamps. (Title 122A, Art. 7.33 (part).)

Sec. 154.303. Supervision of Stamp Procurement

The director of the cigarette tax division shall:

(1) direct the administration and enforcement of the provisions of this chapter;

(2) supervise the printing and manufacturing of tax stamps under the contract as awarded by the State Purchasing and General Services Commission;

(3) have possession and custody of, and be responsible for, specification plans, photographs, impressions, drawings, electroplates, printing stones, and any property that may provide a way to reproduce, manufacture, or print cigarette tax stamps in the design selected by the comptroller;

(4) inspect the stamps after the manufacturing or printing;

(5) reject and supervise the destruction of sheets of stamps that do not meet the specifications in the contract; and

(6) have control of manufactured or printed stamps and be responsible for the stamps until the treasurer receives the stamps. (Title 122A, Art. 7.40.)

Sec. 154.304. Inspection

(a) To determine the tax liability of a person dealing in cigarettes, the comptroller may:

(1) inspect any premises where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary to determine the tax liability;

(3) examine the records required by this chapter or records kept incident to the conduct of the cigarette business of the person dealing in cigarettes; and

(4) examine stocks of cigarettes and cigarette stamps.

(b) A person dealing in cigarettes may not:

(1) fail to produce, on the comptroller's demand, records required by this chapter; or

(2) hinder or prevent the inspection of the required records or the examination of the premises. (Title 122A, Art. 7.27.)

Sec. 154.305. Refund for Damaged Stamps

The treasurer may make rules providing for a refund for stamps that are unfit for sale or use because of damage. (Title 122A, Art. 7.35, Sec. (2).)

Sec. 154.306. Exchange of Stamps

(a) The treasurer may make rules providing for exchange or replacement without cost of stamps affixed to a package of cigarettes if the cigarettes have become unfit for use or consumption or unsalable.

(b) The treasurer may not exchange stamps under this section unless the treasurer is satisfied that the cigarettes are unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer. (Title 122A, Art. 7.35, Sec. (3).)

Sec. 154.307. Records

The treasurer shall keep a record of:

(1) stamps sold by the treasurer or under the treasurer's direction;

(2) stamps exchanged by the treasurer; and

(3) refunds made on stamps purchased. (Title 122A, Art. 7.08, Sec. (5) (part).)

Sec. 154.308. Information Confidential

(a) Information obtained by the attorney general or comptroller from a record, report, instrument, or copy of a record, report, or instrument required by this chapter is confidential and not open to public inspection, except as provided by Subsections (c), (d), and (e) of this section.

(b) Information obtained by the attorney general or comptroller during an examination of a taxpayer's books, records, papers, officers, employees, business affairs, operations, source of income, profits, losses, or expenditures is confidential and not open to public inspection, except as provided by Subsections (c) and (d) of this section.

(c) The comptroller or attorney general may use information obtained from an examination or obtained from a record, report, instrument, or copy of a record, report, or instrument to enforce the provisions of this chapter.

(d) The comptroller or attorney general may authorize examination by other officers and law enforcement officials of this state, or by tax officials of another state, or by officials of the federal government if a reciprocal arrangement exists.

(e) Information set forth in a lien filed under this title or in a permit issued under Section 154.101 or 154.102 of this code is not confidential. (Title 122A, Art. 7.25.)

[Sections 154.309–154.400 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT OF TAX

Sec. 154.401. Evidence

(a) In a suit to establish or collect a tax, penalty, and cost of audit from a distributor, the following types of reports are admissible in evidence and are prima facie evidence of their contents:

(1) a report filed with the comptroller by the distributor, or a copy of a report certified to by the comptroller or the comptroller's chief clerk, showing the number of cigarettes sold by the distributor on which a tax, penalty, and cost of audit have not been paid; or

(2) an audit made by the comptroller from the books or records of the distributor, or audit made by another person if signed and sworn to as being made from the records of the distributor or persons from whom the distributor has bought, received, or delivered cigarettes.

(b) The inaccuracy of the report or audit may be shown.

(c) If the attorney general files suit for taxes and attaches or files as an exhibit a report or audit and an affidavit of the comptroller that the taxes are unpaid and that all payments and credits have been allowed, unless the opposing party files an answer as required by Rule 185, Texas Rules of Civil Procedure, the audit or report shall be taken as prima facie evidence of the amount owed. Rule 185, Texas Rules of Civil Procedure, applies to suits to collect taxes under this chapter. (Title 122A, Art. 7.18.)

Sec. 154.402. Venue

A civil suit filed under this chapter may be brought in Travis County or in the county of the defendant's domicile. (Title 122A, Art. 7.19.)

Sec. 154.403. Seizure

(a) The comptroller with or without process may seize:

(1) cigarettes taxed under this chapter that are possessed or controlled by a person for the purpose of selling or removing the cigarettes in violation of this chapter;

(2) cigarettes that are removed, deposited, or concealed by a person intending to avoid payment of taxes imposed by this chapter;

(3) an automobile, boat, conveyance, or other type of vehicle used to remove or transport cigarettes by a person intending to avoid payment of taxes imposed by this chapter; and

(4) equipment, paraphernalia, or other tangible personal property used by a person intending to avoid payment of taxes imposed by this chapter found in the place where the cigarettes are found.

(b) An item seized under this section is forfeited to the state and remains in the custody of the comptroller, sheriff, or other officer for disposition as provided by this chapter. The seized item is not subject to replevin. (Title 122A, Art. 7.30, Sec. (1) (part).)

Sec. 154.404. Comptroller's Report

(a) If the comptroller seizes property under Section 154.403 of this code, the comptroller shall immediately make a written report showing:

(1) the name of the person making the seizure;

(2) the place where the property was seized;

(3) the person from whom the property was seized;

(4) an inventory; and

(5) an appraisal showing ordinary retail price of the items seized.

(b) The comptroller shall prepare the report in duplicate. The person who seized the property shall sign the report. The comptroller shall give the original to the person from whom the property was seized and shall file a duplicate copy open for public inspection in the comptroller's office. (Title 122A, Art. 7.30, Sec. (2).)

Sec. 154.405. Forfeiture Proceeding

(a) At the comptroller's request, the attorney general or the district or county attorney of the county where the seizure occurred shall file an in rem proceeding in a court of competent jurisdiction in the county of seizure. The state is the plaintiff, and the owner or person in possession of the seized property is defendant. If the owner or possessor is unknown, the seized property is the defendant.

(b) After the suit is filed, the clerk of the court shall notify the owner or person in possession to appear before the court on a named date to show cause why the property should not be forfeited. The date of appearance may not be set for less than two days after the date of service of the notice. The notice shall be served by the sheriff of the county.

(c) On the comptroller's affidavit that the defendant is a nonresident, that the defendant's residence is unknown, or that the defendant's name is unknown, notice or process shall be served or published in the manner provided by law for service on nonresidents or unknown defendants. The hearing may not be held before the expiration of 10 days after the date of service or the first publication of the notice. The court shall appoint an attorney to represent the nonresident or unknown defendant. The attorney has the rights, duties, and compensation as provided by law for an attorney appointed to represent a nonresident defendant or an unknown defendant. (Title 122A, Art. 7.30, Secs. (1) (part), (3).)

Sec. 154.406. Sale by Sheriff

(a) If a court renders final judgment maintaining a seizure and declaring a forfeiture as provided by Section 154.405 of this code, the court shall order that the sheriff sell the property to the highest bidder at public auction in the county of seizure. The sheriff shall give 10 days' notice of the sale by advertising at least twice in a legal publication in the county.

(b) The sheriff shall send the sale proceeds, less expenses of seizure and court costs, to the state treasury. The net proceeds are allocated as provided by Subchapter J of this chapter.

(c) If the district or county attorney files and prosecutes a case under Section 154.405 of this code, a fee of $15 shall be paid to the official in addition to other fees allowed by law. The fee is collected as court costs out of the sale proceeds. (Title 122A, Art. 7.30, Sec. (4).)

Sec. 154.407. Sale by Comptroller

In lieu of the forfeiture proceeding provided by Section 154.405 of this code, the comptroller may sell seized property through the summary proceeding provided by Section 154.408 of this code if the property appears by the report or receipt of the officer seizing it to have an appraised value of $500 or less. (Title 122A, Art. 7.31 (part).)

Sec. 154.408. Summary Proceeding

(a) The comptroller shall publish a notice in a newspaper in the county where the seizure was made. The notice must:

(1) give a description of the property;
(2) state the time and place of seizure;
(3) state the cause of seizure; and

(4) require a person claiming an interest in the property to appear and make a claim within 15 days after the date of publication.

(b) A person claiming an interest in seized property may:

(1) file a timely claim with the comptroller stating the person's interest in the property; and

(2) execute a bond to the state in the amount of $250 with sureties approved by the comptroller conditioned on the person paying the cost of the forfeiture proceeding if forfeiture is established.

(c) If the comptroller receives the bond provided for in this section, the comptroller shall send the bond with a certified copy of the report or receipt of the property seized as provided by Section 154.404 of this code to the attorney general or the county or district attorney of the county of seizure. The attorney general or county or district attorney shall file and prosecute forfeiture proceedings as provided by Section 154.405 of this code.

(d) If no person files a timely claim and executes a bond, the comptroller shall:

(1) give 10 days' notice of the sale of the seized property by publishing notice twice in a newspaper in the county of seizure;

(2) sell the seized property at the time and place specified in the notice at public auction; and

(3) after deducting the cost of seizure, appraisement, custody, and sale, deposit the proceeds in the state treasury to be allocated as provided by Subchapter J of this chapter. (Title 122A, Art. 7.31, Secs. (1), (2), (3) (part).)

Sec. 154.409. Unstamped Cigarettes

If cigarettes seized under Section 154.403 of this code are unstamped, an officer selling the cigarettes shall affix the required stamps to the cigarettes and deduct the cost of the stamps from the sale proceeds. (Title 122A, Art. 7.31, Sec. (3) (part).)

Sec. 154.410. Seizure or Sale No Defense

The seizure, forfeiture, and sale of cigarettes or property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter. (Title 122A, Art. 7.32.)

Sec. 154.411. Waiver Permitted

(a) The comptroller may waive a forfeiture proceeding for property seized under Section 154.403 of this code if the owner or possessor of the property:

(1) affixes the required stamp to the individual packages of cigarettes; and

(2) in addition to the value of the stamps required to be affixed, pays to the state through the comptroller a sum equal to the value of the required stamps.

(b) The comptroller may make a compromise with a person before or after a claim is filed in court. The comptroller shall keep a record open for public inspection of compromises and waivers of forfeiture made under this section. (Title 122A, Art. 7.33 (part).)

Sec. 154.412. Payment to Treasury

The comptroller shall deposit money collected under Section 154.411, after payment of costs and commissions, in the treasury to be allocated as provided by Subchapter J of this chapter. (Title 122A, Art. 7.34.)

Sec. 154.413. State Tax Lien

Taxes, penalties, and costs of auditing as provided in Section 154.301 of this code that a distributor owes this state are a preferred lien, first and prior to other existing liens, contract or statutory, legal or equitable, on all property of the distributor used in the distributor's business. (Title 122A, Art. 7.15 (part).)

Sec. 154.414. Property Included

Property subject to the lien provided for in Section 154.413 of this code includes:

(1) manufacturing plants;

(2) storage plants;

(3) warehouses;

(4) office buildings and equipment;

(5) motor vehicles or equipment used as a vehicle;

(6) each tract of land on which a manufacturing plant, storage plant, warehouse, office building, or other property is located;

(7) tangible property that is used to carry on the distributor's business; and

(8) the distributor's cigarettes and stamps. (Title 122A, Art. 7.15 (part).)

[Sections 154.415–154.500 reserved for expansion]

SUBCHAPTER I. PENALTIES

Sec. 154.501. Penalties

(a) A person violates this chapter if the person:

(1) is a distributor, wholesale dealer, retail dealer, or distributing agent and fails to keep records required by this chapter;

(2) is a distributor, wholesale dealer, or retail dealer and sells cigarettes taxed under this chapter without a valid permit;

(3) is a distributor, wholesale dealer, or distributing agent and fails to make a report or makes a false or incomplete report required by this chapter to the comptroller;

(4) is a distributing agent and stores, distributes, or delivers unstamped cigarettes in this state without a valid permit; or

(5) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule made by the comptroller under this chapter.

(b) A person who violates this section forfeits and shall pay to the state a penalty of not less than $25 nor more than $500.

(c) Each day on which a violation occurs is a separate offense.

(d) The attorney general shall bring suits to recover penalties under this section.

(e) A suit under this section may be brought in a court of competent jurisdiction in Travis County or in any court having jurisdiction. (Title 122A, Art. 7.24.)

Sec. 154.502. Unstamped Cigarettes

A person commits an offense if the person:

(1) makes a first sale of unstamped cigarettes;

(2) sells, offers for sale, or presents as a prize or gift unstamped cigarettes; or

(3) knowingly consumes, uses, or smokes cigarettes taxed under this chapter without a stamp affixed to each individual package. (Title 122A, Art. 7.29, Secs. (4) (part), (5); Art. 7.36 (part).)

Sec. 154.503. Possession in Quantities Less Than 10,000

(a) Except as provided by Section 154.042 of this code, a person commits an offense if the person possesses unstamped cigarettes in quantities less than 10,000.

(b) This section does not prohibit transportation of cigarettes by a common carrier. (Title 122A, Art. 7.29, Secs. (1) (part), (2) (part); Art. 7.36 (part).)

Sec. 154.504. Possession of Quantities Less Than Individual Package

A person commits an offense if the person sells cigarettes in quantities less than an individual package. (Title 122A, Art. 7.36 (part).)

Sec. 154.505. Cancellation of Stamp

A person commits an offense if the person knowingly cancels or mutilates, with fraudulent intent or to conceal a violation of this chapter, a stamp affixed to an individual package of cigarettes. (Title 122A, Art. 7.36 (part).)

Sec. 154.506. Concealment of a Violation

A person commits an offense if the person uses any artful device or deceptive practice to conceal a violation of this chapter. (Title 122A, Art. 7.29, Sec. (6) (part); Art. 7.36 (part).)

Sec. 154.507. Misleading the Comptroller

A person commits an offense if the person misleads the comptroller in the enforcement of this chapter. (Title 122A, Art. 7.29, Sec. (6) (part); Art. 7.36 (part).)

Sec. 154.508. Refusing to Surrender Cigarettes

A person commits an offense if the person refuses to surrender to the comptroller on demand cigarettes possessed in violation of this chapter. (Title 122A, Art. 7.36 (part).)

Sec. 154.509. Permits

A person commits an offense if the person:

(1) as a distributor or representative of a distributor, makes a first sale without having a valid permit;

(2) as a distributor or representative of a distributor, makes a first sale without having a permit posted where it can be easily seen by the public;

(3) as a distributor, wholesale dealer, or agent of a distributor or wholesale dealer, does not deliver an invoice required by Section 154.203 of this code to the purchaser;

(4) as a wholesale dealer, retail dealer, or agent of a wholesale dealer or retail dealer, sells cigarettes without having a valid permit;

(5) as a wholesale dealer, retail dealer, or agent of a wholesale dealer or retail dealer, sells cigarettes without having a permit posted where it can be easily seen by the public;

(6) as a distributing agent, stores or distributes unstamped cigarettes without having a valid permit; or

(7) offers for sale or solicits an order in this state for cigarettes to be shipped to a place in this state without having a valid solicitor's permit. (Title 122A, Art. 7.16, Sec. (2) (part); Art. 7.36 (part).)

Sec. 154.510. Misdemeanor

An offense under Sections 154.502 through 154.509 of this code is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (Title 122A, Art. 7.16, Sec. (2) (part); Art. 7.36, Sec. (*o*) (part).)

Sec. 154.511. Transportation of Cigarettes

A person, other than a common carrier, commits an offense if the person:

(1) knowingly transports more than 200 cigarettes without a stamp affixed to each individual package;

(2) wilfully refuses to stop a motor vehicle operated to transport cigarettes after a request to stop from an authorized person; or

(3) while transporting cigarettes refuses to permit a complete inspection of the cargo by an authorized person. (Title 122A, Art. 7.-29, Sec. (2) (part); Art. 7.37 (part).)

Sec. 154.512. Inspection of Premises

A person commits an offense if the person refuses to permit a complete inspection by an authorized person of any premises where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange. (Title 122A, Art. 7.37 (part).)

Sec. 154.513. Previously Used or Old Design Stamps

A person commits an offense if the person:

(1) uses, sells, offers for sale, or possesses for use or sale previously used stamps;

(2) attaches or causes to be attached a previously used stamp to an individual package of cigarettes;

(3) uses or consents to the use of previously used stamps in connection with the sale or offering for sale of cigarettes; or

(4) sells, offers for sale, or possesses stamps of an old design more than 60 days after the date of issue of a new design of stamps. (Title 122A, Art. 7.08, Sec. (4) (part); Art. 7.29, Sec. (3); Art. 7.37 (part).)

Sec. 154.514. Sale of Stamps

A person commits an offense if the person, without having the requisition from the comptroller as provided by Section 154.044 of this code:

(1) purchases stamps from a person other than the treasurer; or

(2) sells lawfully issued stamps to a person other than the treasurer. (Title 122A, Art. 7.29, Sec. (4) (part); Art. 7.37 (part).)

Sec. 154.515. Possession in Quantities of 10,000 or More

(a) Except as provided by Section 154.042 of this code, a person commits an offense if the person possesses unstamped cigarettes in quantities of 10,000 or more.

(b) This section does not prohibit transportation of cigarettes by a common carrier. (Title 122A, Art. 7.29, Secs. (1) (part), (2) (part), Art. 7.37 (part).)

Sec. 154.516. Books and Records

A person commits an offense if the person:

(1) as a distributor, distributing agent, or agent of a distributor or distributing agent, knowingly makes, delivers to, and files with the comptroller a false return or report or an incomplete return or report;

(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

(3) as a distributor, wholesale dealer, retail dealer, distributing agent, or the agent of a distributor, wholesale dealer, retail dealer, or distributing agent, destroys, mutilates, or conceals a book or record required by this chapter;

(4) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required to be kept by this chapter or that are incidental to the conduct of the cigarette business and may be kept;

(5) knowingly makes a false entry or fails to make entries in the books and records required by this chapter to be kept by a distributor, wholesale dealer, retail dealer, or distributing agent; or

(6) fails to keep for two years in this state books and records required by this chapter to be kept by a distributor, wholesale dealer, retail dealer, or distributing agent. (Title 122A, Art. 7.37 (part).)

Sec. 154.517. Felony

An offense under Sections 154.511 through 154.516 of this code is a felony punishable by:

(1) confinement in the state penitentiary for not more than two years or in the county jail for not less than one month nor more than six months;

(2) a fine of not less than $100 nor more than $5,000; or

(3) both fine and confinement. (Title 122A, Art. 7.08, Sec. (4) (part); Art. 7.37 (part).)

Sec. 154.518. Overlap of Penalties

If an offense is punishable under Section 154.510 of this code and also under Section 154.517 of this code, the punishment prescribed by Section 154.517 of this code controls. (Title 122A, Art. 7.37 (part).)

Sec. 154.519. Venue

Venue of a prosecution for an offense punishable under Section 154.-510 or 154.517 of this code is in Travis County or in the county where the offense occurred. (Title 122A, Art. 7.37 (part).)

Sec. 154.520. Counterfeit Stamps

(a) A person commits an offense if the person:

(1) prints, engraves, makes, issues, sells, or circulates counterfeit stamps;

(2) possesses with intent to use, sell, circulate, or pass a counterfeit stamp;

(3) uses or consents to the use of a counterfeit stamp in the sale or offering for sale of cigarettes; or

(4) places or causes to be placed a counterfeit stamp on an individual package of cigarettes.

(b) An offense under this section is a felony punishable by confinement in the state penitentiary for not less than 2 years nor more than 20 years.

(c) Venue of a prosecution under this section is in Travis County (Title 122A, Art. 7.38.)

Sec. 154.521. Disclosure of Records

(a) An employee of the attorney general or the comptroller commits an offense if the employee:

(1) gives a person information obtained from the examination of books or records as provided for by Section 154.301 or 154.304 of this code;

(2) permits a person to inspect records, reports, or copies of records or reports required by this chapter;

(3) gives a person a copy of a record or report required by this chapter; or

(4) gives a person information about a record or report.

(b) An offense under this section is a Class B misdemeanor.

(c) It is an exception to the offense defined by this section that the employee of the attorney general or the comptroller furnished information as authorized by Section 154.308 of this code. (Title 122A, Art. 7.-26.)

[Sections 154.522–154.600 reserved for expansion]

SUBCHAPTER J. NATURE OF TAX AND DISPOSITION OF FUNDS

Sec. 154.601. Nature of Tax

(a) The tax imposed by this chapter is not an occupation tax.

(b) If a court of competent jurisdiction declares the tax imposed by this chapter to be an occupation tax:

(1) the legislature intends that the holding not affect the validity of the remaining provisions of this chapter; and

(2) one-fourth of the net revenue is allocated to the available school fund and three-fourths to the tax clearance fund.

(c) A tax imposed by this chapter is in lieu of any other occupation or excise tax imposed by the state or a political subdivision of the state on cigarettes. (Title 122A, Arts. 7.04, 7.41.)

Sec. 154.602. Enforcement Fund

(a) The legislature may appropriate money for manufacturing and printing of cigarette tax stamps. Amounts appropriated under this section shall be taken from revenue received from the cigarette tax before the revenue is allocated.

(b) An enforcement fund is established in the state treasury to be used by the comptroller for the administration and enforcement of this chapter.

(c) The comptroller shall deposit to the credit of the enforcement fund 1.875 percent of:

(1) the first $2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand; and

(2) the first $4.10 of tax received per 1,000 cigarettes for cigarettes weighing more than three pounds per thousand.

(d) At the end of each biennium, any unexpended portion of the fund is allocated as provided by Section 154.603 of this code. (Title 122A, Art. 7.08, Sec. (7) (part); Art. 7.39 (part).)

Sec. 154.603. Disposition of Revenue

(a) After the deduction for the enforcement fund, the revenue remaining of the first $2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the first $4.10 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand is allocated:

(1) 18.75 percent to the available school fund; and

(2) 81.25 percent to the general revenue fund.

(b) The revenue remaining after deduction for the enforcement fund and allocation under Subsection (a) of this section is allocated:

(1) 50 cents per 1,000 cigarettes to the state parks fund;

(2) 50 cents per 1,000 cigarettes to the local parks, recreation and open space fund (this allocation expires on August 31, 1983); and

(3) the remainder to the general revenue fund.

(c) The Parks and Wildlife Department may use the money allocated under Subsection (b)(1) of this section to plan, develop, acquire, maintain, and operate state parks and historic sites. The department may not use more than 25 percent of the revenue credited to the state parks fund under Subsection (b)(1) to operate and maintain state parks and historic sites.

(d) Revenues allocated under Subsection (b) of this section may be credited daily to the tax clearance fund. On the first day of each month following the collection of the revenue, the revenue shall be credited to the appropriate funds as designated in Subsection (b) of this section. The revenue collected in August of each year shall be credited to the appropriate funds on August 31. No portion of the revenue allocated in Subsection (b) of this section shall remain or be distributed under the provisions of the tax clearance fund. (Title 122A, Art. 7.02, Sec. (1) (part); Art. 7.06, Sec. (3) (part); Art. 24.01 (part).)

CHAPTER 155. CIGARS AND TOBACCO PRODUCTS TAX

SUBCHAPTER A. GENERAL PROVISIONS

Section
155.001. Definitions

[Sections 155.002–155.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND RATE OF TAX

155.021. Tax Imposed
155.022. First Sale
155.023. Payment of Tax
155.024. Exception for Personal Use
155.025. Selling Only From a Vending Machine
155.026. Penalty for Failure to Pay Tax
155.027. Venue

[Sections 155.028–155.040 reserved for expansion]

SUBCHAPTER C. PERMITS

155.041. Permits
155.042. Solicitor's Permit
155.043. Distributing Agent's Permit
155.044. Issuance of Distributing Agent's Permit
155.045. Joint Permit
155.046. Forms
155.047. Exception for Personal Use
155.048. Issuance of Permits
155.049. Licensing Year; Fees
155.050. Payment for Permits
155.051. Additional Fees
155.052. Permit Required
155.053. Display of Permit
155.054. Additional Permits
155.055. Unexpired Permit
155.056. Vending Machine, Train, Boat, Airplane, Vehicle
155.057. Vending Machine With Cigarette Dealer's Permit
155.058. Revenue
155.059. Revocation of Distributor's, Wholesale Dealer's, or Retailer's Permit

SUBCHAPTER C. PERMITS—Continued

Section
155.060. Revocation of Solicitor's Permit
155.061. Bond
155.062. Insufficient Bond
155.063. Release of Surety
155.064. Cash or Securities

[Sections 155.065–155.100 reserved for expansion]

SUBCHAPTER D. RECORDS AND REPORTS

155.101. Record of Tobacco Products
155.102. Report of Sale or Use
155.103. Interstate Business
155.104. Salesman
155.105. Solicitor
155.106. Records Kept Separate
155.107. Carrier
155.108. Distributing Agent's Record
155.109. Vending Machine Record
155.110. Availability of Records
155.111. Distributor's Report
155.112. Solicitor's Report
155.113. Distributing Agent's Report

[Sections 155.114–155.140 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT OF TAX

155.141. Evidence
155.142. Venue
155.143. Seizure
155.144. Comptroller's Report
155.145. Forfeiture Proceeding
155.146. Sale by Sheriff
155.147. Sale by Comptroller
155.148. Summary Proceeding
155.149. Tax Not Paid
155.150. Seizure or Sale No Defense
155.151. Waiver Permitted
155.152. Payment to Treasury
155.153. State Tax Lien Preferred
155.154. Property Included

[Sections 155.155–155.180 reserved for expansion]

SUBCHAPTER F. ADMINISTRATION BY COMPTROLLER

155.181. Auditing Costs
155.182. Payment of Double Amount
155.183. Inspection
155.184. Credit for Tax Paid
155.185. Information Confidential

[Sections 155.186–155.200 reserved for expansion]

SUBCHAPTER G. PENALTIES

Section
155.201. Penalties
155.202. Payment of Tax
155.203. Possession: Tax Due $50 or Less
155.204. Concealment of Violation
155.205. Misleading the Comptroller
155.206. Refusing to Surrender Tobacco Products
155.207. Permits
155.208. Misdemeanor
155.209. Transportation of Tobacco Products
155.210. Inspection of Premises
155.211. Possession: Tax Due More Than $50
155.212. Books and Records
155.213. Felony
155.214. Overlap of Penalties
155.215. Venue for Felony

[Sections 155.216–155.240 reserved for expansion]

SUBCHAPTER H. ALLOCATION OF TAX

155.241. Allocation of Tax

CHAPTER 155. CIGARS AND TOBACCO PRODUCTS TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 155.001. Definitions

In this chapter:

(1) "Cigar" means a roll of fermented tobacco wrapped in tobacco. The main stream of smoke from a cigar produces an alkaline reaction to litmus paper. The main stream of smoke from a cigarette produces an acid reaction to litmus paper.

(2) "Cigar containing a substantial amount of nontobacco ingredients" means a cigar that contains sheet binder, sheet wrapper, sheet filler, or a combination of sheet binder, sheet wrapper, or sheet filler.

(3) "Tobacco product" means:

(A) a cigar;

(B) a cheroot;

(C) a stogie;

(D) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(E) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing; or

(F) an article or product made of tobacco or a tobacco substitute, but does not include snuff or a cigarette.

(4) "First sale" means:

(A) the first sale or distribution in intrastate commerce in this state; or

(B) the first use or consumption in this state.

(5) "Drop shipment" means a delivery of cigars or tobacco products received by a person in this state if payment for the cigars or

tobacco products is made to the shipper, seller, or buyer or by a person other than the consignee.

(6) "Consumer" means a person who possesses tobacco products to consume or dispose of them.

(7) "Distributor" means a person who:

(A) engages in the business of selling tobacco products in this state and brings, or causes to be brought, into this state from outside this state tobacco products for sale, use, or consumption; or

(B) manufactures tobacco products in this state for sale, use, or consumption in this state.

(8) "Wholesale dealer" means a person:

(A) whose principal business is that of a wholesale dealer or jobber;

(B) who is known to the trade as a wholesale dealer or jobber; and

(C) who sells cigars or tobacco products to licensed retailers for resale, gives away cigars or tobacco products, or displays cigars or tobacco products so that a retailer may acquire them.

(9) "Retailer" means a dealer other than a wholesale dealer:

(A) whose principal business is selling merchandise at retail; and

(B) who sells or offers for sale cigars or tobacco products, gives away cigars or tobacco products, or displays cigars or tobacco products so that a consumer may acquire them.

(10) "Solicitor" means a person who:

(A) represents a licensed nonresident supplier; and

(B) solicits or takes orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this state.

(11) "Distributing agent" means a person in this state who is an agent of a person outside this state, receives cigars and tobacco products in interstate commerce, and stores the cigars and tobacco products for distribution or delivery to distributors, wholesale dealers, retailers, or consumers on orders from the person outside this state.

(12) "Dealer" means a person who:

(A) manufactures cigars or tobacco products for distribution, sale, use, or consumption in this state; or

(B) imports cigars or tobacco products from outside this state for distribution, sale, use, or consumption in this state.

(13) "Retail price" means the ordinary price paid by the consumer for individual cigars or tobacco products before adding the tax. (Title 122A, Art. 8.01, Secs. (c), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), (m), (p), (q).)

[Sections 155.002–155.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND RATE OF TAX

Sec. 155.021. Tax Imposed

(a) A tax is imposed on each person who makes a first sale of cigars or tobacco products.

(b) The tax rates are:

(1) one cent per 10 or fraction of 10 on cigars weighing three pounds or less per thousand;

(2) $7.50 per thousand on cigars that:

(A) weigh more than three pounds per thousand; and

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(3) $11 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain no substantial amount of nontobacco ingredients;

(4) $15 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain a substantial amount of nontobacco ingredients; and

(5) 25 percent of the factory list price, exclusive of any trade discount, special discount, or deal, on chewing tobacco and smoking tobacco.

(c) Cigars taxed under Subsections (b)(3) and (b)(4) of this section are presumed to contain a substantial amount of nontobacco ingredients unless the report on the cigars required by Section 155.111 of this code is accompanied by an affidavit stating that specific cigars described in the report do not contain sheet wrapper, sheet binder, or sheet filler. If the manufacturer prepares the report, the manufacturer shall make the affidavit. If the distributor prepares the report, the manufacturer and the distributor shall make the affidavit. (Title 122A, Art. 8.02.)

Sec. 155.022. First Sale

(a) A person making a first sale of cigars or tobacco products in this state shall pay the tax to the treasurer.

(b) At the time of a first sale of cigars or tobacco products in this state, the person making the first sale shall collect the tax from the purchaser or recipient in addition to the selling price.

(c) In each subsequent sale or distribution, the tax shall be added to the selling price so that the tax is ultimately paid by the person using or consuming the cigars or tobacco products in this state. (Title 122A, Art. 8.03 (part).)

Sec. 155.023. Payment of Tax

A distributor shall pay the tax on cigars and tobacco products sold, used, or disposed of during the preceding month at the same time the distributor files the report required by Section 155.111 of this code. A distributor shall pay in legal tender, money order, or exchange made payable to the treasurer. (Title 122A, Arts. 8.03 (part), 8.04 (part).)

Sec. 155.024. Exception for Personal Use

A person who personally transports cigars or tobacco products in quantities or amounts that would ordinarily retail at 25 cents or less is not required to pay the tax imposed by this chapter if the person uses the cigars or tobacco products and does not sell them or offer them for sale. (Title 122A, Art. 8.03 (part).)

Sec. 155.025. Selling Only From a Vending Machine

No occupation tax shall be collected from a person for the privilege of selling tobacco products only from a vending machine other than the permit fee required by this chapter. (Title 122A, Art. 8.13.)

Sec. 155.026. Penalty for Failure to Pay Tax

(a) If a distributor fails to file the report and pay the tax when due, the distributor forfeits and shall pay to the state a penalty of five percent of the amount of the tax. After the first 30 days, the distributor shall pay an additional penalty of five percent of the amount of tax.

(b) The minimum penalty imposed by this section is $1.

(c) The yearly interest rate on delinquent taxes under this chapter is six percent. (Title 122A, Art. 8.04 (part).)

Sec. 155.027. Venue

Venue of a suit for collection of a penalty for late payment of taxes is in Travis County. (Title 122A, Art. 8.04 (part).)

[Sections 155.028–155.040 reserved for expansion]

SUBCHAPTER C. PERMITS

Sec. 155.041. Permits

(a) A person may not engage in business as a distributor, wholesale dealer, or retailer unless the person has applied for and received the applicable permit from the comptroller.

(b) A distributor, wholesale dealer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesale dealer, or retailer.

(c) The comptroller shall furnish the application form for the permit if the applicant makes a writen request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(d) The application must include:

(1) a description of the manner in which the applicant transacts or intends to transact business;

(2) the address of the principal office, residence, and place of business for which the permit applies;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses, not to exceed three; and

(4) any other information the comptroller requests. (Title 122A, Art. 8.06, Sec. (a) (part).)

Sec. 155.042. Solicitor's Permit

(a) A person may not engage in business as a solicitor unless the person has applied for and received a permit from the comptroller.

(b) A solicitor's permit must set forth the names and addresses of the vendors and employers that the solicitor represents. The solicitor may not represent a vendor or employer whose name is not on the permit. (Title 122A, Art. 8.07 (part).)

Sec. 155.043. Distributing Agent's Permit

(a) A person may not engage in business as a distributing agent unless the person has applied for and received a distributing agent's permit from the comptroller.

(b) The comptroller shall furnish the application form for the permit if the applicant makes a written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(c) The application must include:

(1) the name under which the distributing agent will do business;

(2) the address of the principal office and place of business in this state to which the permit applies;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses; and

(4) any other information the comptroller requests.

(d) A distributing agent shall obtain a permit for each place of business owned or operated by the distributing agent. (Title 122A, Art. 8.16, Sec. (a) (part).)

Sec. 155.044. Issuance of Distributing Agent's Permit

(a) The comptroller shall issue a permit to a distributing agent for a designated place of business if the comptroller has received the application and fee.

(b) The permits are nonassignable and consecutively numbered. (Title 122A, Art. 8.16, Sec. (b) (part).)

Sec. 155.045. Joint Permit

The comptroller may issue a joint permit for cigarettes and tobacco products to a distributor, wholesale dealer, retailer, or distributing agent. A person who receives a joint permit pays only one permit fee. (Title 122A, Art. 8.06, Sec. (a) (part).)

Sec. 155.046. Forms

The comptroller shall prescribe the form for the application for a permit to be a distributor, wholesale dealer, retailer, or distributing agent. (Title 122A, Art. 8.06, Sec. (a) (part); Art. 8.16, Sec. (a) (part).)

Sec. 155.047. Exception for Personal Use

If a distributor acquires tobacco products for personal use or consumption and not for sale, gift, or other disposition:

(1) the distributor is not required to have a distributor's permit, but shall comply with all other provisions of this chapter; and

(2) the comptroller may accept payment of the tax from the distributor. (Title 122A, Art. 8.06, Sec. (a) (part).)

Sec. 155.048. Issuance of Permits

(a) The comptroller shall issue a permit to a distributor, wholesale dealer, or retailer if the comptroller has received the application and fee.

(b) The permit shall be issued for a designated place of business.

(c) The permits are nonassignable and shall be consecutively numbered. The permit must show the kind of permit and authorize the sale of tobacco products in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or reasonable rules of the comptroller are violated. (Title 122A, Art. 8.06, Sec. (b) (part).)

Sec. 155.049. Licensing Year; Fees

(a) A permit required by this chapter expires on the last day of February of each year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) $100 for a distributing agent's permit;

(2) $25 for a distributor's permit;

(3) $15 for a wholesale dealer's permit;

(4) $5 for a retailer's permit; and

(5) $1 for a solicitor's permit.

(c) The comptroller shall prorate the fee for a new permit required by Section 155.041 or 155.043 of this code by allowing a discount comput-

ed by quarters of the licensing year. (Title 122A, Art. 8.06, Sec. (a) (part); Art. 8.07 (part); Art. 8.16, Sec. (a) (part); Art. 8.29 (part).)

Sec. 155.050. Payment for Permits

(a) An applicant for a permit required by Section 155.041 of this code shall send the fee with the application. Payment must be in cash, postal or express money order, or check.

(b) A permit issued in exchange for a personal check is conditioned on final payment of the check. After giving five days' notice to the holder that the bank on which the check is drawn has refused payment, the comptroller may revoke a permit. A revoked permit is subject to recall and seizure by the comptroller. If the comptroller receives funds to redeem the dishonored check, the comptroller may reinstate the permit. (Title 122A, Art. 8.06, Sec. (b) (part).)

Sec. 155.051. Additional Fees

(a) A person who is required by Section 155.041 or 155.043 of this code to have a permit and who does not obtain a renewal permit before the beginning of the licensing year shall pay a late application fee of $1 to the comptroller at the time the person pays the permit fee.

(b) If the comptroller must visit a permit holder to collect a permit fee due under this chapter, the permit holder shall pay a service fee of $5 in addition to the permit fee. (Title 122A, Art. 8.29 (part).)

Sec. 155.052. Permit Required

(a) If a permit issued under this chapter is revoked or suspended, the person may not sell tobacco products from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(b) Except at the comptroller's discretion, if a permit is revoked the person may not receive a new permit within one year after the date of revocation. (Title 122A, Art. 8.06, Sec. (b) (part); Art. 8.07 (part); Art. 8.14 (part).)

Sec. 155.053. Display of Permit

(a) A person who has a permit required by Section 155.041 of this code shall keep the permit on public display at the place of business of the person to whom it is issued.

(b) If the permit is assigned to a tobacco products vending machine, the person shall publicly display the permit on the machine so that all the information may be read.

(c) If the permit is assigned to a train, the person shall post the permit in the car where tobacco products are displayed or offered for sale.

(d) If the permit is assigned to a vehicle, the person shall post the permit in a conspicuous place in the vehicle. (Title 122A, Art. 8.06, Sec. (b) (part).)

Sec. 155.054. Additional Permits

(a) If a person operates as a distributor and a wholesale dealer in the same place of business, the person shall obtain only a distributor's permit for the place of business.

(b) If a distributor or wholesale dealer sells tobacco products at wholesale and retail, the distributor or wholesale dealer shall obtain a retailer's permit in addition to the distributor's permit or wholesale dealer's permit. (Title 122A, Art. 8.06, Sec. (b) (part).)

Sec. 155.055. Unexpired Permit

A person who has an unexpired permit required by Section 155.041 of this code may return the permit to the comptroller for credit on the unex-

pired portion for the purchase of a permit of a higher classification. (Title 122A, Art. 8.06, Sec. (b) (part).)

Sec. 155.056. Vending Machine, Train, Boat, Airplane, Vehicle

If a distributor, wholesale dealer, or retailer applies for a permit to sell tobacco products from a vending machine, train, boat, airplane, or vehicle, the applicant must show on the application:

(1) the serial number of the vending machine;

(2) the make, motor number, and license number of the vehicle;

(3) the name of the airplane;

(4) the name of the boat; or

(5) the number of the train and the name of the railway company. (Title 122A, Art. 8.06, Sec. (b) (part).)

Sec. 155.057. Vending Machine With Cigarette Dealer's Permit

If a person has a cigarette dealer's permit for a vending machine, a tobacco products permit for the machine is not required. The record required by Section 155.109 of this code must show that the person has a cigarette dealer's permit. (Title 122A, Art. 8.12 (part).)

Sec. 155.058. Revenue

Revenue from the sale of permits to distributors, wholesale dealers, and retailers is allocated in the same manner that other revenue is allocated by Subchapter H of this chapter. (Title 122A, Art. 8.15.)

Sec. 155.059. Revocation of Distributor's, Wholesale Dealer's, or Retailer's Permit

(a) The comptroller may revoke or suspend a distributor's, wholesale dealer's, or retailer's permit if the distributor, wholesale dealer, or retailer has violated a provision of this chapter or a rule made under this chapter.

(b) The comptroller shall revoke or suspend a distributor's permit if the distributor:

(1) fails or refuses to file a new or additional bond within 10 days after the date of the comptroller's demand as required by Section 155.062 of this code;

(2) fails to file an acceptable new bond within 15 days after the date of the notice from the comptroller required by Section 155.063 of this code; or

(3) fails or refuses to file reports and remit or pay the tax at the intervals fixed by the comptroller.

(c) The comptroller shall give written notice stating the reason for the revocation or suspension. The comptroller may mail the notice to the place designated on the application for a permit as the place of business. (Title 122A, Art. 8.08, Sec. (b) (part); Art. 8.14 (part).)

Sec. 155.060. Revocation of Solicitor's Permit

If a solicitor fails to comply with the provisions of this chapter, the comptroller, after giving the solicitor notice and an opportunity to be heard, may revoke the permit. (Title 122A, Art. 8.07 (part).)

Sec. 155.061. Bond

(a) A distributor shall file with the application for a permit a bond that:

(1) is conditioned on full, complete, and faithful performance of all conditions and requirements imposed by this chapter or by rules made by the comptroller; and

(2) guarantees timely payment of taxes, penalty, interest, and costs.

(b) The comptroller shall set the amount of the bond for at least three times the amount of tax that may be expected to accrue during a month, but the minimum amount is $1,000.

(c) The bond must:

(1) be executed by a corporate surety authorized to do business in this state;

(2) be payable to the state; and

(3) remain in force for one year after its effective date unless released by the comptroller.

(d) A bond that is continuous in form may be continued in effect by a renewal certificate acceptable to the comptroller. If a renewal certificate is issued, it has the force and effect of an original bond. (Title 122A, Art. 8.08, Sec. (a).)

Sec. 155.062. Insufficient Bond

(a) The comptroller may require an additional or a new bond if an existing bond becomes insufficient or a surety becomes unsatisfactory. An existing bond is not invalidated by the filing of a new bond, the cancellation or suspension of a permit, or a recovery on any bond.

(b) The comptroller may require the filing of reports and payment of tax at intervals shorter than one month if the comptroller believes that an existing bond is insufficient. (Title 122A, Art. 8.08, Sec. (b) (part).)

Sec. 155.063. Release of Surety

(a) If a surety files a written request with the comptroller in Austin to be released from liability on a bond, the surety shall be released from liability accruing more than 30 days after the date of the filing of the request. The surety is not released from liability accruing before the 30-day period expires.

(b) The comptroller, on receipt of the request, shall notify the person in whose behalf a bond was filed that the request has been received. (Title 122A, Art. 8.08, Sec. (b) (part).)

Sec. 155.064. Cash or Securities

(a) Instead of filing the bond required by Section 155.061 of this code, an applicant may deposit:

(1) cash in the amount of the required bond in the suspense account of the treasury; or

(2) securities with a par value equal to the amount of the required bond and of a class in which funds of The University of Texas may be legally invested.

(b) Cash or securities deposited under this section shall be released within 60 days after the date of cancellation or surrender of a permit held by the person in whose behalf they were deposited if the comptroller clears the person of tax liability.

(c) If the state secures a judgment in an action against a person in whose behalf cash or securities were deposited and recovers any tax, costs, penalty, or interest, the comptroller may withdraw or use the cash or sell the securities and use the proceeds to satisfy the judgment.

(d) A person may acknowledge in writing the correctness of the state's claim for tax, costs, penalty, or interest and may authorize the use of the cash or the proceeds from the sale of the securities to pay on or pay off the claim without a suit being filed.

(e) Suit may be filed against any surety on any bond furnished by a distributor without resorting to or exhausting the assets of the distributor or making the distributor, as principal obligor to the bond, a party to the suit. (Title 122A, Art. 8.08, Sec. (c).)

[Sections 155.065–155.100 reserved for expansion]

SUBCHAPTER D. RECORDS AND REPORTS

Sec. 155.101. Record of Tobacco Products

(a) A distributor, wholesale dealer, or retailer shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record of tobacco products purchased and of tobacco products received. The record must include all invoices, bills of lading, waybills, freight bills, express receipts or copies of express receipts, and any shipping records furnished by the carrier and the seller or shipper.

(b) A distributor, wholesale dealer, or retailer shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record in a well-bound book that provides complete information on tobacco products purchased and on tobacco products received. The record must show:

(1) the date the tobacco products were received;

(2) whether the tobacco products were drop-shipped or otherwise;

(3) the name and address of the seller and the shipper;

(4) the place from which the tobacco products were shipped or delivered;

(5) the place where the tobacco products were received;

(6) the name of the carrier if shipped by common carrier;

(7) the name of the boat or barge if shipped by water;

(8) if received by mail, whether sent registered mail, insured parcel post, or ordinary mail;

(9) the number and kind of tobacco products received on which tax has been paid; and

(10) if a distributor, an inventory made the first of each month showing the number and kind of tobacco products on hand on which tax has been paid. (Title 122A, Art. 8.05, Sec. (a) (part).)

Sec. 155.102. Report of Sale or Use

(a) A distributor or wholesale dealer shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record of each sale, distribution, or use of tobacco products whether taxed under this chapter or not. The record shall be kept on an invoice supplied by the distributor or wholesale dealer. The invoice shall be supported by the receipts and records furnished by the carrier. The invoice shall be issued in duplicate, unless the sale or distribution is made by drop shipment, in which case the invoice shall be issued in triplicate. The original invoice shall be delivered to the purchaser, and the duplicate shall be kept by the distributor or wholesale dealer. If tobacco products are distributed or exchanged in a manner other than a sale, the invoice must explain the transaction. If a distributor or wholesale dealer sells tobacco products at retail, the distributor or wholesale dealer shall issue an invoice to the retail department for tobacco products to be sold at retail, and the distributor or wholesale dealer shall keep the stock invoiced for retail sale separate from other stock.

(b) A distributor or wholesale dealer shall keep at each place of business in this state a record in a well-bound book of all tobacco products sold, distributed, or used by the distributor or wholesale dealer.

(c) The invoice and record book must show for each sale, distribution, or use of tobacco products:

(1) the date of sale, distribution, or use;

(2) the purchaser's name and address;

(3) the means of delivery;

(4) if delivered by common carrier, the name of the carrier;

(5) if delivered by mail, whether by registered mail, insured parcel post, or ordinary mail,

(6) the designation of drop shipment if the sale is a drop shipment by a distributor;

(7) the number and kind of tobacco products sold; and

(8) if the sale is by a distributor, the number and kind of tobacco products on which the tax has been paid. (Title 122A, Art. 8.05, Sec. (b) (part).)

Sec. 155.103. Interstate Business

If a person sells tobacco products in interstate commerce only, the person shall keep the same type of records and make the same type of reports that are required of a distributor. (Title 122A, Art. 8.05, Sec. (c).)

Sec. 155.104. Salesman

A salesman who is employed by a manufacturer, who handles only the products of the employer, and who sells or distributes tobacco products on which the tax has been paid in this state for resale shall keep the same records that are required of a wholesale dealer. The salesman shall deliver the original of the invoice required by Section 155.102 of this code to the purchaser or recipient of the tobacco products. (Title 122A, Art. 8.05, Sec. (d) (part).)

Sec. 155.105. Solicitor.

(a) A solicitor shall keep in this state a record of orders solicited and orders taken for tobacco products. The record must show:

(1) the quantity and kind of tobacco products ordered or shipped;

(2) the name of the person from whom the tobacco products were ordered or by whom the tobacco products are shipped;

(3) the name and address of the purchaser;

(4) the date the tobacco products were ordered; and

(5) if available, the date the tobacco products were shipped.

(b) If a solicitor is given credit for or furnished records of an order or shipment shipped by the vendor that the solicitor represents, the solicitor shall keep the record whether or not the solicitor took the order. (Title 122A, Art. 8.05, Sec. (e) (part).)

Sec. 155.106. Records Kept Separate

A person required to keep records or invoices, bills of lading, freight bills, waybills, express receipts, requisitions, or copies of orders by this subchapter shall keep the records separate from records of other merchandise handled. (Title 122A, Art. 8.05, Sec. (e) (part).)

Sec. 155.107. Carrier

(a) A common or contract carrier that transports tobacco products in this state shall keep a record in this state of tobacco products handled or transported. The record must show for each transaction:

(1) the names of the consignor and the consignee;

(2) the date of delivery; and

(3) the kind or quantity of tobacco products transported or handled.

(b) The carrier shall keep the record required by this section and all books or records in the custody of the carrier showing the shipment of tobacco products open at all times for inspection by the comptroller or the attorney general. The carrier shall allow the comptroller and the attorney general free access to books, records, and tobacco products in the carrier's custody. (Title 122A, Art. 8.19.)

Sec. 155.108. Distributing Agent's Record

(a) A distributing agent shall keep at each place of business in this state a record of tobacco products received and a record of each distribution or delivery made by the distributing agent.

(b) The record of tobacco products received must include the originals or copies of all:

(1) orders;
(2) invoices;
(3) bills of lading;
(4) waybills;
(5) freight bills;
(6) express receipts; and
(7) shipping records furnished to the distributing agent by the carrier and the shipper.

(c) The record of a distribution or delivery must include:

(1) orders or copies of orders;
(2) invoices or copies of invoices; and
(3) shipping records furnished by the carrier and the person ordering the distribution or delivery. (Title 122A, Art. 8.16, Sec. (c) (part).)

Sec. 155.109. Vending Machine Record

(a) A person who operates a vending machine shall keep, at the place designated in the application as the permanent place for records, a record of all tobacco products vending machines possessed.

(b) The record must show for each machine:

(1) the date the machine was received from the seller;
(2) the serial number of the machine;
(3) the present location of the machine;
(4) the date the machine was placed on location;
(5) the current permit number of the machine;
(6) the date the permit expires; and
(7) if the machine is sold or disposed of, the name and address of the person receiving the machine. (Title 122A, Art. 8.12 (part).)

Sec. 155.110. Availability of Records

(a) A person, other than a common carrier or contract carrier, required by this subchapter to keep a record, shall keep the record available at all times for two years for inspection by the comptroller and the attorney general.

(b) If a distributor's, wholesale dealer's, or retailer's place of business is a vending machine, train, or vehicle, the distributor, wholesale dealer, or retailer shall designate in the application for a permit a permanent place to keep the records. The distributor, wholesale dealer, or retailer shall keep the records in the designated place after the tobacco products are delivered from the vending machine, train, or vehicle. (Title 122A, Art. 8.05, Secs. (a) (part), (b) (part), (d) (part), (e) (part); Art. 8.12 (part); Art. 8.16, Sec. (c) (part).)

Sec. 155.111. Distributor's Report

(a) A distributor shall file with the comptroller in Austin, on or before the 10th day of each calendar month, a report for the preceding month.

(b) The report must show:

(1) the amounts of cigars and tobacco products purchased, received, acquired, or ordered;

(2) the amounts of cigars and tobacco products sold, distributed, used, lost, or disposed of;

(3) the amounts of cigars and tobacco products on hand at the beginning and the end of the month; and

(4) any other information the comptroller requires relating to cigars and tobacco products handled and to taxes due on them.

(c) The comptroller shall prescribe the form of the report. (Title 122A, Art. 8.04 (part).)

Sec. 155.112. Solicitor's Report

(a) A solicitor shall file with the comptroller, on or before the fifth day of each month, a copy of each order solicited by him in this state during the preceding calendar month. The comptroller shall supply the forms.

(b) The copy must show:

(1) the quantity and kind of tobacco products ordered;

(2) the name of the person ordering the tobacco products;

(3) the name of the person from whom the tobacco products were ordered;

(4) the name and address of the purchaser;

(5) the date the tobacco products were ordered; and

(6) any other information the comptroller requires. (Title 122A, Art. 8.07 (part).)

Sec. 155.113. Distributing Agent's Report

(a) A distributing agent in this state shall report to the comptroller each day except Sundays and holidays all tobacco product deliveries made by the distributing agent on the preceding day or days.

(b) The comptroller shall prescribe the form of the report, and the distributing agent shall furnish the form.

(c) The report must show:

(1) the name of the person ordering the delivery;

(2) the date of delivery;

(3) the name and address of the person to whom delivered;

(4) the invoice number;

(5) the bill of lading or waybill number;

(6) the quantity and kind of tobacco products delivered;

(7) the means of delivery;

(8) the transportation agent; and

(9) the designation of drop shipment if a drop shipment.

(d) If the invoice furnished to the distributing agent by the manufacturer or person ordering the delivery or the bill of lading prepared by the distributing agent to cover the shipment under the invoice contains the information required by this section, a copy of the invoice or bill of lading may be sent to the comptroller instead of the report. (Title 122A, Art. 8.16, Sec. (d).)

[Sections 155.114–115.140 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT OF TAX

Sec. 155.141. Evidence

(a) In a suit to establish or collect a tax, penalty, and cost of audit from a distributor, the following types of reports are admissible in evidence and are prima facie evidence of their contents:

(1) a report filed with the comptroller by the distributor, or a copy of a report certified to by the comptroller or the comptroller's chief clerk, showing the number of tobacco products sold by the distributor on which a tax, penalty, and cost of audit has not been paid; or

(2) an audit made by the comptroller from the books or records of the distributor, or an audit made by another person if signed and sworn to as being made from the records of the distributor or persons from whom the distributor has bought, received, or delivered tobacco products.

(b) The inaccuracy of the report or audit may be shown. (Title 122A, Art. 8.10.)

Sec. 155.142. Venue

A civil suit filed under this chapter may be brought in Travis County or in the county of the defendant's domicile. (Title 122A, Art. 8.11.)

Sec. 155.143. Seizure

(a) The comptroller with or without process may seize:

(1) tobacco products taxed under this chapter that are possessed or controlled by a person for the purpose of selling or removing the tobacco products in violation of this chapter;

(2) tobacco products that are removed, deposited, or concealed by a person intending to avoid payment of taxes imposed by this chapter;

(3) an automobile, truck, boat, conveyance, or other type of vehicle used to remove or transport tobacco products by a person intending to avoid payment of taxes imposed by this chapter; and

(4) equipment, paraphernalia, or other tangible personal property used by a person intending to avoid payment of taxes imposed by this chapter found in the place where the tobacco products are found.

(b) An item seized under this section is forfeited to the state and remains in the custody of the comptroller, sheriff, or other officer for disposition as provided by this chapter. The seized item is not subject to replevin. (Title 122A, Art. 8.21 (part).)

Sec. 155.144. Comptroller's Report

(a) If the comptroller seizes property under Section 155.143 of this code, the comptroller shall immediately make a written report showing:

(1) the name of the person making the seizure;

(2) the place where the property was seized;

(3) the person from whom the property was seized;

(4) an inventory; and

(5) an appraisal showing the ordinary retail price of the items seized.

(b) The comptroller shall prepare the report in duplicate. The person who seized the property shall sign the report. The comptroller shall give the original to the person from whom the property was seized and shall file a duplicate copy open for public inspection in the comptroller's office. (Title 122A, Art. 8.21 (part).)

Sec. 155.145. Forfeiture Proceeding

(a) At the comptroller's request, the attorney general or the district or county attorney of the county where the seizure occurred shall file an in rem proceeding in a court of competent jurisdiction in the county of seizure. The state is the plaintiff, and the owner or person in possession of the seized property is the defendant. If the owner or possessor is unknown, the seized property is the defendant.

(b) After the suit is filed, the clerk of the court shall notify the owner or person in possession to appear before the court on a named date to show cause why the property should not be forfeited. The date of appearance may not be set for less than two days after the date of service of the notice. The notice shall be served by the sheriff of the county.

(c) On the comptroller's affidavit that the defendant is a nonresident, that the defendant's residence is unknown, or that the defendant's name is unknown, notice or process shall be served or published in the manner provided by law for service on nonresidents or unknown defendants. The hearing may not be held before the expiration of 10 days after the date of service or of the first publication of the notice. The court shall appoint an attorney to represent the nonresident or unknown defendant. The attorney has the rights, duties, and compensation as provided by law for an attorney appointed to represent a nonresident defendant or an unknown defendant. (Title 122A, Art. 8.21 (part).)

Sec. 155.146. Sale by Sheriff

(a) If a court renders final judgment maintaining a seizure and declaring a forfeiture as provided by Section 155.145 of this code, the court shall order that the sheriff sell the property to the highest bidder at public auction in the county of seizure. The sheriff shall give 10 days' notice of the sale by advertising at least twice in a legal publication in the county.

(b) The sheriff shall send the sale proceeds, less expenses of seizure and court costs, to the state treasury. The net proceeds are allocated as provided by Subchapter H of this code.

(c) If the district or county attorney files and prosecutes a case under Section 155.145 of this code, a fee of $15 shall be paid to the official in addition to other fees allowed by law. The fee is collected as court costs out of the sale proceeds. (Title 122A, Art. 8.21 (part).)

Sec. 155.147. Sale by Comptroller

In lieu of the forfeiture proceeding provided by Section 155.145 of this code, the comptroller may sell seized property through the summary proceeding provided by Section 155.148 of this code if the property appears by the report or receipt of the officer seizing it to be of an appraised value of $500 or less. (Title 122A, Art. 8.21 (part).)

Sec. 155.148. Summary Proceeding

(a) The comptroller shall publish a notice in a newspaper in the county where the seizure was made. The notice must:

(1) give a description of the property;

(2) state the time and place of seizure;

(3) state the cause of seizure; and

(4) require a person claiming an interest in the property to appear and make a claim within 15 days after the date of publication.

(b) A person claiming an interest in seized property may:

(1) file a claim with the comptroller stating the person's interest in the property; and

(2) execute a bond to the state in the amount of $250 with sureties approved by the comptroller conditioned on the person paying the cost of the forfeiture proceeding if forfeiture is established.

(c) If the comptroller receives the bond provided for by this section, the comptroller shall send the bond with a certified copy of the report or receipt of the property seized as provided by Section 155.144 of this code to the attorney general or the county or district attorney of the county of seizure. The attorney general or county or district attorney shall file and prosecute forfeiture proceedings as provided by Section 155.145 of this code.

(d) If no person files a timely claim and executes a bond, the comptroller shall:

(1) give 10 days' notice of the sale of the seized property by publishing notice twice in a newspaper in the county of seizure;

(2) sell the seized property at the time and place specified in the notice at public auction; and

(3) after deducting the cost of seizure, appraisement, custody, and sale, deposit the proceeds in the treasury to be allocated as provided by Subchapter H of this chapter. (Title 122A, Art. 8.21 (part).)

Sec. 155.149. Tax Not Paid

If the tax has not been paid on tobacco products seized under Section 155.143 of this code, an officer who sells the tobacco products shall pay the tax and deduct the amount of the tax from the sale proceeds. (Title 122A, Art. 8.21 (part).)

Sec. 155.150. Seizure or Sale No Defense

The seizure, forfeiture, and sale of tobacco products or property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter. (Title 122A, Art. 8.22.)

Sec. 155.151. Waiver Permitted

(a) The comptroller may waive a forfeiture proceeding for property seized under Section 155.143 of this code if the owner or possessor of the property:

(1) pays the tax due; and

(2) pays to the state through the comptroller an additional sum equal to the tax due.

(b) The comptroller may make a compromise with a person before or after a claim is filed in court. The comptroller shall keep a record open for public inspection of compromises and waivers of forfeiture made under this section. (Title 122A, Art. 8.23 (part).)

Sec. 155.152. Payment to Treasury

The comptroller shall deposit money collected under Section 155.151 of this code, after payment of costs and commissions, in the treasury to be allocated as provided by Subchapter H of this chapter. (Title 122A, Art. 8.24.)

Sec. 155.153. State Tax Lien Preferred

The taxes, penalties, and costs of auditing provided by Section 155.181 of this code that a distributor owes this state are a preferred lien, first and prior to other existing liens, contract or statutory, legal or equitable, on all property of the distributor used in the distributor's business. (Title 122A, Art. 8.09 (part).)

Sec. 155.154. Property Included

Property subject to the lien provided for by Section 155.153 of this code includes:

(1) manufacturing plants;

(2) storage plants;

(3) warehouses;

(4) office buildings and equipment;

(5) motor vehicles or equipment used as a vehicle;

(6) each tract of land on which a manufacturing plant, storage plant, warehouse, office building, or other property is located;

(7) tangible property that is used to carry on the distributor's business; and

(8) all the distributor's tobacco products. (Title 122A, Art. 8.09 (part).)

[Sections 155.155–155.180 reserved for expansion]

SUBCHAPTER F. ADMINISTRATION BY COMPTROLLER

Sec. 155.181. Auditing Costs

(a) If a distributor fails to pay a tax or penalty in the proper manner when due as required by this chapter, the comptroller may employ a person to determine the amount due. If the distributor has not paid the tax or penalty, the distributor shall pay the reasonable expenses incurred in the investigation and audit as an additional penalty.

(b) The comptroller shall deposit funds paid in under this section to the credit of a special fund in the treasury to be used for making audits. The comptroller may use other funds available for audits when the special fund is exhausted. (Title 122A, Art. 8.09 (part).)

Sec. 155.182. Payment of Double Amount

(a) If the comptroller finds that a person has sold tobacco products without the tax having been paid, the comptroller may require the person to pay the state through the comptroller a sum equal to twice the amount of tax due.

(b) If the person does not furnish the comptroller evidence of a report showing tax payment to cover nontax-paid tobacco products purchased by the person, it is presumed that the tobacco products were sold without reporting and paying the tax. (Title 122A, Art. 8.23 (part).)

Sec. 155.183. Inspection

(a) To determine the tax liability of a person dealing in tobacco products, the comptroller may:

(1) inspect any premises where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary to determine the tax liability;

(3) examine the records required by this chapter or records kept incident to the conduct of the tobacco products business of the person dealing in tobacco products; and

(4) examine stocks of tobacco products.

(b) A person dealing in tobacco products may not:

(1) fail to produce, on the comptroller's demand, records required by this chapter; or

(2) hinder or prevent the inspection of the required records or the examination of the premises. (Title 122A, Art. 8.18.)

Sec. 155.184. Credit for Tax Paid

(a) The comptroller may make rules providing for credit for tax paid on tobacco products if the tobacco products have become unfit for use or consumption or unsalable.

(b) The comptroller may not allow credit under this section unless the comptroller is satisfied that the tobacco products are unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer. (Title 122A, Art. 8.25, Sec. (b).)

Sec. 155.185. Information Confidential

(a) Information obtained by the attorney general or the comptroller from a record, report, instrument, or copy of a record, report, or instrument that is required by this chapter is confidential and not open to public inspection, except as provided by Subsections (c), (d), and (e) of this section.

(b) Information obtained by the attorney general or the comptroller during an examination of a taxpayer's books, records, papers, officers, employees, business affairs, operations, source of income, profits, losses, or expenditures is confidential and not open to public inspection, except as provided by Subsections (c) and (d) of this section.

(c) The comptroller or the attorney general may use information obtained from an examination or obtained from a record, report, instrument, or copy of a record, report, or instrument to enforce the provisions of this chapter.

(d) The comptroller or the attorney general may authorize examination by other officers and law enforcement officials of this state, by tax officials of another state, or by officials of the federal government if a reciprocal arrangement exists.

(e) Information set forth in a lien filed under this title or in a permit issued under Sections 155.041–155.043 of this code is not confidential. (Title 122A, Art. 8.32.)

[Sections 155.186–155.200 reserved for expansion]

SUBCHAPTER G. PENALTIES

Sec. 155.201. Penalties

(a) A person violates this chapter if the person:

(1) is a distributor, wholesale dealer, retailer, or distributing agent and fails to keep records required by this chapter;

(2) is a distributor, wholesale dealer, or retailer and sells tobacco products taxed under this chapter without a valid permit;

(3) is a distributor, wholesale dealer, or distributing agent and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report;

(4) is a distributing agent and stores, distributes, or delivers tobacco products on which the tax has not been paid in this state without a valid permit; or

(5) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule made by the comptroller under this chapter.

(b) A person who violates this chapter forfeits and shall pay to the state a penalty of not less than $25 nor more than $500.

(c) A separate offense is committed each day on which a violation occurs.

(d) The attorney general shall bring suits to recover penalties under this section.

(e) A suit under this section may be brought in a court of competent jurisdiction in Travis County or in any court having jurisdiction. (Title 122A, Art. 8.17.)

Sec. 155.202. Payment of Tax

A person commits an offense if the person, without the tax being paid or accounted for by a licensed distributor:

(1) makes a first sale of cigars or tobacco products;

(2) sells, offers for sale, or presents as a prize or gift tobacco products; or

(3) knowingly consumes, uses, or smokes tobacco products. (Title 122A, Art. 8.20 (part); Art. 8.26, Secs. (a), (b), (c).)

Sec. 155.203. Possession: Tax Due $50 or Less

(a) A person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax of $50 or less is required to be paid. The absence of evidence of tax payment is notice that the tax has not been paid and is prima facie evidence of nonpayment.

(b) This section does not prohibit transportation of tobacco products by a common carrier. (Title 122A, Art. 8.20 (part); Art. 8.26, Sec. (d).)

Sec. 155.204. Concealment of Violation

A person commits an offense if the person uses any artful device or deceptive practice to conceal a violation of this chapter. (Title 122A, Art. 8.20 (part); Art. 8.26, Sec. (e).)

Sec. 155.205. Misleading the Comptroller

A person commits an offense if the person misleads the comptroller in the enforcement of this chapter. (Title 122A, Art. 8.20 (part); Art. 8.26, Sec. (f).)

Sec. 155.206. Refusing to Surrender Tobacco Products

A person commits an offense if the person refuses to surrender to the comptroller on demand tobacco products possessed in violation of this chapter. (Title 122A, Art. 8.26, Sec. (g).)

Sec. 155.207. Permits

A person commits an offense if the person:

(1) as a distributor or representative of a distributor, makes a first sale without having a valid permit;

(2) as a distributor or a representative of a distributor, makes a first sale without having a permit posted where it can be easily seen by the public;

(3) as a distributor, wholesale dealer, or the representative of a distributor or wholesale dealer, does not deliver an invoice required by Section 155.102 of this code to the purchaser;

(4) as a wholesale dealer, retailer, or the representative of a wholesale dealer or retailer, sells tobacco products without having a valid permit;

(5) as a wholesale dealer, retailer, or representative of a wholesale dealer or retailer, sells tobacco products without having a permit posted where it can be easily seen by the public;

(6) as a distributing agent, stores or distributes tobacco products on which the tax has not been paid without having a valid permit; or

(7) offers for sale or solicits an order in this state for tobacco products to be shipped to a place in this state without having a valid solicitor's permit. (Title 122A, Art. 8.07 (part); Art. 8.26, Secs. (h), (i), (j), (k), (*l*), (m) (part).)

Sec. 155.208. Misdemeanor

An offense under Sections 155.202–155.207 of this code is a misdemeanor punishable by a fine of not less than $25 nor more than $200. (Title 122A, Art. 8.07 (part); Art. 8.26, Sec. (m) (part).)

Sec. 155.209. Transportation of Tobacco Products

A person commits an offense if the person:

(1) knowingly transports tobacco products taxed under this chapter without the tax being accounted for by a licensed distributor;

(2) wilfully refuses to stop a motor vehicle operated to transport tobacco products after a request to stop from an authorized person; or

(3) while transporting tobacco products, refuses to permit a complete inspection of the cargo by an authorized person. (Title 122A, Art. 8.20 (part); Art. 8.27, Secs. (a), (b), (c).)

Sec. 155.210. Inspection of Premises

A person commits an offense if the person refuses to permit a complete inspection by an authorized person of any premises where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange. (Title 122A, Art. 8.27, Sec. (d).)

Sec. 155.211. Possession: Tax Due More Than $50

(a) A person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax of more than $50 is required to be paid.

(b) This section does not prohibit transportation of tobacco products by a common carrier. (Title 122A, Art. 8.20 (part); Art. 8.27, Sec. (e).)

Sec. 155.212. Books and Records

A person commits an offense if the person:

(1) as a distributor, distributing agent, or the representative of a distributor or distributing agent knowingly makes, delivers to, and files with the comptroller an incomplete return or report;

(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

(3) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required to be kept by this chapter or that are incidental to the conduct of the tobacco products business and may be kept;

(4) knowingly fails to make entries in the books and records required by this chapter to be kept by a distributor, wholesale dealer, retailer, or distributing agent; or

(5) fails to keep for two years in this state books and records required by this chapter to be kept by a distributor, wholesale dealer, retailer, or distributing agent. (Title 122A, Art. 8.27, Secs. (f), (g), (h), (i), (j), (k) (part).)

Sec. 155.213. Felony

An offense under Sections 155.209–155.212 of this code is a felony punishable by:

(1) confinement in the state penitentiary for not more than two years or confinement in the county jail for not less than one month nor more than six months;

(2) a fine of not less than $100 nor more than $5,000; or

(3) both fine and confinement. (Title 122A, Art. 8.27, Sec. (k) (part).)

Sec. 155.214. Overlap of Penalties

If an offense is punishable under Section 155.208 of this code and also under Section 155.213 of this code, the punishment prescribed by Section 155.213 of this code controls. (Title 122A, Art. 8.27 (part).)

Sec. 155.215. Venue for Felony

Venue of a prosecution for an offense punishable under Section 155.-213 of this code is in Travis County or in the county where the offense occurred. (Title 122A, Art. 8.28.)

[Sections 155.216–155.240 reserved for expansion]

SUBCHAPTER H. ALLOCATION OF TAX

Sec. 155.241. Allocation of Tax

Revenue collected under this chapter shall be deposited to the credit of the general revenue fund. (Title 122A, Art. 24.01 (part).)

CHAPTER 156. HOTEL OCCUPANCY TAX

SUBCHAPTER A. DEFINITIONS

Section

156.001. Definitions

[Sections 156.002–156.050 reserved for expansion]

SUBCHAPTER B. TAX

156.051. Tax Imposed
156.052. Rate of Tax
156.053. Collection of Tax

[Sections 156.054–156.100 reserved for expansion]

SUBCHAPTER C. EXCEPTIONS

156.101. Exception—Permanent Resident
156.102. Exception—Religious, Charitable, or Educational Organization

[Sections 156.103–156.150 reserved for expansion]

SUBCHAPTER D. REPORTS AND PAYMENTS

156.151. Report and Payment
156.152. Access to Books and Records

[Sections 156.153–156.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

156.201. Interest on Delinquent Taxes
156.202. Penalty
156.203. Criminal Penalty

[Sections 156.204–156.250 reserved for expansion]

SUBCHAPTER F. DISPOSITION OF REVENUE

156.251. Revenue Deposited in General Revenue Fund

CHAPTER 156. HOTEL OCCUPANCY TAX

SUBCHAPTER A. DEFINITIONS

Sec. 156.001. Definitions

In this chapter:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, or nursing home.

(2) "Quarterly period" means a quarter of the calendar year. The first quarter is composed of the months of January, February, and March; the second quarter is composed of the months of April, May, and June; the third quarter is composed of the months of July, August, and September; and the fourth quarter is composed of the months of October, November, and December. (Title 122A, Arts. 23.01(a), (g).)

[Sections 156.002–156.050 reserved for expansion]

SUBCHAPTER B. TAX

Sec. 156.051. Tax Imposed

(a) A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing $2 or more each day.

(b) The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession. (Title 122A, Art. 23.02(a) (part); Arts. 23.01(b), (c), (d).)

Sec. 156.052. Rate of Tax

The rate of the tax imposed by this chapter is three percent of the price paid for a room in a hotel. (Title 122A, Art. 23.02(a) (part).)

Sec. 156.053. Collection of Tax

A person owning, operating, managing, or controlling a hotel shall collect for the state the tax that is imposed by this chapter and that is calculated on the amount paid for a room in the hotel. (Title 122A, Art. 23.03.)

[Sections 156.054–156.100 reserved for expansion]

SUBCHAPTER C. EXCEPTIONS TO TAX

Sec. 156.101. Exception—Permanent Resident

This chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days. (Title 122A, Art. 23.02(b); Art. 23.01(h).)

Sec. 156.102. Exception—Religious, Charitable, or Educational Organization

This chapter does not impose a tax on a corporation or association that is organized and operated exclusively for a religious, charitable, or educational purpose if no part of the net earnings of the corporation or

association inure to the benefit of a private shareholder or individual. (Title 122A, Art. 23.02(c).)

[Sections 156.103–156.150 reserved for expansion]

SUBCHAPTER D. REPORTS AND PAYMENTS

Sec. 156.151. Report and Payment

On the last day of January, April, July, and October, a person required to collect the tax imposed by this chapter shall pay the comptroller the tax collected during the preceding quarterly period and at the same time shall file with the comptroller a report stating:

(1) the total amount of the payments made for rooms at the person's hotel during the preceding quarterly period;

(2) the amount of the tax collected by the person during the preceding quarterly period; and

(3) other information that the comptroller requires to be in the report. (Title 122A, Art. 23.04 (part).)

Sec. 156.152. Access to Books and Records

After the comptroller gives reasonable notice to a person that the comptroller intends to inspect the books or records of the person, the comptroller has access to the person's books or records necessary for the comptroller to determine the correctness of a report filed under this chapter or the amount of taxes due under this chapter. (Title 122A, Art. 23.05 (part).)

[Sections 156.153–156.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 156.201. Interest on Delinquent Taxes

A tax imposed by this chapter that is not paid to the comptroller when it is due draws interest as provided by Section 111.060 of this code. (Title 122A, Art. 23.07 (part).)

Sec. 156.202. Penalty

(a) If the person who is required to pay to the comptroller the tax imposed by this chapter fails to file a report or does not pay the tax when it is due, the person shall forfeit to the state a penalty of five percent of the amount of tax due.

(b) If the person who is required to pay the tax to the comptroller does not pay the tax within 30 days after it is due, the person shall forfeit to the state a penalty of an additional five percent of the amount of tax due.

(c) The minimum penalty under this section is $1. (Title 122A, Art. 23.07 (part).)

Sec. 156.203. Criminal Penalty

(a) A person commits an offense if the person fails to file a report with the comptroller, collect a tax for the state, or pay a tax to the comptroller as the person is required to do by this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $1,000. (Title 122A, Art. 23.06 (part).)

[Sections 156.204–156.250 reserved for expansion]

SUBCHAPTER F. DISPOSITION OF REVENUE

Sec. 156.251. Revenue Deposited in General Revenue Fund

The revenue from the tax imposed by this chapter shall be deposited in the state treasury to the credit of the general revenue fund. (Title 122A, Art. 24.01 (part).)

SUBTITLE F. FRANCHISE TAX

CHAPTER 171. FRANCHISE TAX

SUBCHAPTER A. TAX IMPOSED

Section
171.001. Tax Imposed
171.002. General Rate of Tax
171.003. Special Rate for Certain Corporations
171.004. Alternate Rate of Tax for Certain Corporations
171.005. Rate of Tax for Corporation in Process of Liquidation

[Sections 171.006–171.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

171.051. Application for Exemption; Effective Date
171.052. Certain Corporations
171.053. Exemption—Railway Terminal Corporation
171.054. Exemption—Savings and Loan Association
171.055. Exemption—Open-End Investment Company
171.056. Exemption—Corporation With Business Interest in Solar Energy Devices
171.057. Exemption—Nonprofit Corporation Organized to Promote County, City, or Another Area
171.058. Exemption—Nonprofit Corporation Organized for Religious Purposes
171.059. Exemption—Nonprofit Corporation Organized to Provide Burial Places
171.060. Exemption—Nonprofit Corporation Organized for Agricultural Purposes
171.061. Exemption—Nonprofit Corporation Organized for Educational Purposes
171.062. Exemption—Nonprofit Corporation Organized for Public Charity
171.063. Exemption—Nonprofit Corporation Exempt From Federal Income Tax
171.064. Exemption—Nonprofit Corporation Organized for Conservation Purposes
171.065. Exemption—Nonprofit Corporation Organized to Provide Water Supply or Sewer Services
171.066. Exemption—Nonprofit Corporation Involved With City Natural Gas Facility
171.067. Exemption—Nonprofit Corporation Organized to Provide Convalescent Homes for Elderly
171.068. Exemption—Nonprofit Corporation Organized to Provide Cooperative Housing
171.069. Exemption—Marketing Associations
171.070. Exemption—Lodges

SUBCHAPTER B. EXEMPTIONS—Continued

Section

171.071. Exemption—Farmers' Cooperative Society
171.072. Exemption—Housing Finance Corporation
171.073. Exemption—Hospital Laundry Cooperative Association
171.074. Exemption—Development Corporation
171.075. Exemption—Cooperative Association
171.076. Exemption—Cooperative Credit Association
171.077. Exemption—Credit Union
171.078. Exemption—Banks
171.079. Exemption—Electric Cooperative Corporation
171.080. Exemption—Telephone Cooperative Corporation
171.081. Exemption—Corporation Exempt by Another Law

[Sections 171.082–171.100 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF TAXABLE CAPITAL; ALLOCATION AND APPORTIONMENT

171.101. Determination of Taxable Capital
171.102. Determination of Taxable Capital of Corporation in Process of Liquidation
171.103. Determination of Gross Receipts From Business Done in This State
171.104. Gross Receipts From Business Done in Texas: Deduction for Food and Medicine Receipts
171.105. Determination of Gross Receipts From Entire Business
171.106. Determination of Amount of Taxable Capital Allocated to This State
171.107. Deduction of Cost of Solar Energy Devise From Taxable Capital Allocated to This State
171.108. Alternate Method of Determining Amount of Taxable Capital Allocated to This State

[Sections 171.109–171.150 reserved for expansion]

SUBCHAPTER D. PAYMENT OF TAX

171.151. Period Covered by Tax
171.152. Date on Which Payment is Due
171.153. Business on Which Tax is Based
171.154. Payment to Comptroller
171.155. Payment of Tax Deposit
171.156. Payment of Additional Tax Deposit by Foreign Corporation
171.157. Exemption of Foreign Corporation From Tax Deposit Requirement
171.158. Payment by Foreign Corporation Before Withdrawal From State

[Sections 171.159–171.200 reserved for expansion]

SUBCHAPTER E. REPORTS AND RECORDS

171.201. Initial Report
171.202. Annual Report
171.203. Public Information Report
171.204. Information Report
171.205. Additional Information Required by Comptroller

SUBCHAPTER E. REPORTS AND RECORDS—Continued

Section

171.206. Confidential Information
171.207. Information Not Confidential
171.208. Prohibition of Disclosure of Information
171.209. Right of Shareholder to Examine or Receive Reports
171.210. Permitted Use of Confidential Information
171.211. Examination of Corporate Records

[Sections 171.212–171.250 reserved for expansion]

SUBCHAPTER F. FORFEITURE OF CORPORATE PRIVILEGES

171.251. Forfeiture of Corporate Privileges
171.252. Effects of Forfeiture
171.253. Suit on Cause of Action Arising Before Forfeiture
171.254. Exception to Forfeiture
171.255. Liability of Director and Officers
171.256. Notice of Forfeiture
171.257. Judicial Proceeding Not Required for Forfeiture
171.258. Revival of Corporate Privileges

[Sections 171.259–171.300 reserved for expansion]

SUBCHAPTER G. FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY

171.301. Grounds for Forfeiture of Charter or Certificate of Authority
171.302. Certification by Comptroller
171.303. Suit for Judicial Forfeiture
171.304. Record of Judicial Forfeiture
171.305. Revival of Charter or Certificate of Authority After Judicial Forfeiture
171.306. Suit to Set Aside Judicial Forfeiture
171.307. Record of Suit to Set Aside Judicial Forfeiture
171.308. Corporate Privileges After Judicial Forfeiture is Set Aside
171.309. Forfeiture by Secretary of State
171.310. Judicial Proceeding Not Required for Forfeiture by Secretary of State
171.311. Record of Forfeiture by Secretary of State
171.312. Revival of Charter or Certificate of Authority After Forfeiture by Secretary of State
171.313. Proceeding to Set Aside Forfeiture by Secretary of State
171.314. Corporate Privileges After Forfeiture by Secretary of State is Set Aside
171.315. Use of Corporate Name After Revival of Charter or Certificate of Authority

[Sections 171.316–171.350 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

171.351. Venue of Suit to Enforce Chapter
171.352. Authority to Restrain or Enjoin
171.353. Appointment of Receiver
171.354. Agent for Service of Process
171.355. Service of Process on Secretary of State

SUBCHAPTER H. ENFORCEMENT—Continued

Section
171.356. Tax Lien
171.357. Notice of Lien
171.358. Effect of Tax Lien Notice
171.359. Release of Lien
171.360. Limitation on Suit to Enforce Lien
171.361. Penalty for Disclosure of Information on Report
171.362. Penalty for Failure to Pay Tax or File Report

[Sections 171.363–171.400 reserved for expansion]

SUBCHAPTER I. DISPOSITION OF REVENUE

171.401. Revenue Deposited in General Revenue Fund

SUBTITLE F. FRANCHISE TAX

CHAPTER 171. FRANCHISE TAX

SUBCHAPTER A. TAX IMPOSED

Sec. 171.001. Tax Imposed

A franchise tax is imposed on each corporation that does business in this state or that is chartered or authorized to do business in this state. (Title 122A, Art. 12.01, Sec. (1) (part).)

Sec. 171.002. General Rate of Tax

(a) The rates of the franchise tax on a corporation are:

(1) $4.25 for each $1,000 or fraction of $1,000 of the corporation's taxable capital that is allocated to this state under Section 171.106 or 171.108 of this code; or

(2) $55.

(b) A corporation shall pay the tax on the basis of the rate provided by this section that results in the greater amount of tax due from the corporation to the state. (Title 122A, Art. 12.01, Sec. (1) (part).)

Sec. 171.003. Special Rate for Certain Corporations

(a) A corporation qualifies for a special franchise tax rate if it does not use the public highways by authority of a certificate of convenience and necessity issued by the Railroad Commission of Texas and if:

(1) it annually pays a tax on intangible assets as required by the law of this state;

(2) it is incorporated for the sole purpose of owning or operating a street railway or passenger bus system in a city, town, or suburb of a city or town;

(3) it is incorporated and does business for the sole purpose of owning, operating, or maintaining an electric interurban railway; or

(4) at least four-fifths of its assets are invested in, and at least four-fifths of its gross income is received from, voting common capital stock that comprises at least four-fifths of the fully voting common stock of a public utility corporation, as defined by the law of this state, whose rates or services are subject to regulation by law.

(b) The special franchise tax rates are:

(1) one-fifth of the amount determined under Section 171.002(a)(1) of this code; or

(2) the amount set by Section 171.002(a)(2) of this code.

(c) A corporation that qualifies for the special tax rate shall pay its tax on the basis of the special rate that results in the greater amount of tax due from the corporation to the state. (Title 122A, Art. 12.01, Sec. (2).)

Sec. 171.004. Alternate Rate of Tax for Certain Corporations

(a) In this section, "total assets" means the items that are required to be reported as assets on a corporation's federal income tax return on the last day of the income tax reporting period that ends in the year before the year in which the tax imposed by this chapter is due.

(b) The franchise tax is determined by using the alternate rates provided by Subsection (c) of this section if the corporation:

(1) previously has paid a franchise tax in this state;

(2) has total assets valued at less than $1 million; and

(3) elects to use the rate established by Subsection (c) of this section.

(c) The alternate tax rates are:

If Total Assets Are at Least	But Less Than	The Tax Is
$ 0	$ 15,000	$ 35
15,000	20,000	45
20,000	25,000	55
25,000	30,000	70
30,000	40,000	90
40,000	50,000	115
50,000	70,000	150
70,000	90,000	200
90,000	110,000	250
110,000	130,000	300
130,000	150,000	350
150,000	175,000	720
175,000	200,000	825
200,000	225,000	930
225,000	250,000	1,040
250,000	275,000	1,155
275,000	300,000	1,260
300,000	325,000	1,365
325,000	350,000	1,480
350,000	375,000	1,585
375,000	400,000	1,705
400,000	425,000	1,805
425,000	450,000	1,915
450,000	475,000	2,020
475,000	500,000	2,135
500,000	550,000	2,300
550,000	600,000	2,520
600,000	650,000	2,740
650,000	700,000	2,960
700,000	750,000	3,175
750,000	800,000	3,395
800,000	850,000	3,610
850,000	900,000	3,835
900,000	950,000	4,050
950,000	1,000,000	4,270

(Title 122A, Art. 12.19, Secs. (1) (part), (2).)

Sec. 171.005. Rate of Tax for Corporation in Process of Liquidation

The franchise tax rate on a corporation in the process of liquidation, as defined by Section 171.102 of this code, is the rate established by Section 171.002(a)(1) of this code. (Title 122A, Art. 12.18 (part).)

[Sections 171.006–171.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

Sec. 171.051. Application for Exemption; Effective Date

(a) Except as provided by Subsection (c) of this section, a corporation may apply for an exemption under this subchapter by filing with the comptroller, as provided by the rules of the comptroller, evidence of the corporation's qualifications for the exemption.

(b) If a corporation files the evidence establishing the corporation's qualifications for an exemption within 15 months after the last day of the calendar month in which the corporation's charter or certificate of authority is dated, the exemption is recognized, if it is finally established, as of the date of the charter or certificate.

(c) The exemption provided by Section 171.063 of this code must be established as provided by that section, but a corporation may apply for and receive other exemptions as provided by this section.

(d) Neither this section nor Section 171.063 of this code requires a corporation that was granted a franchise tax exemption before September 1, 1975, that was entitled to the exemption on September 1, 1975, and that has held the exemption since that date, to file an additional application, report, letter of exemption, or other evidence of qualification for that exemption. (Title 122A, Art. 12.03, Secs. (5), (6) (part).)

Sec. 171.052. Certain Corporations

A corporation that is an insurance company; surety, guaranty, or fidelity company; transportation company; or sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts is exempted from the franchise tax. (Title 122A, Art. 12.-03, Sec. (1) (part).)

Sec. 171.053. Exemption—Railway Terminal Corporation

A corporation organized as a railway terminal corporation and having no annual net income from its business is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.054. Exemption—Savings and Loan Association

A savings and loan association chartered or authorized to operate as a savings and loan association by the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.055. Exemption—Open-End Investment Company

An open-end investment company, as defined by the Investment Company Act of 1940 (Section 80a—1 et seq., 15 U.S.C.), that is subject to that Act and that is registered under The Securities Act (Article 581—1 et seq., Vernon's Texas Civil Statutes) is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.056. Exemption—Corporation With Business Interest in Solar Energy Devices

A corporation engaged solely in the business of manufacturing, selling, or installing solar energy devices, as defined by Section 171.107 of

this code, is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.057. Exemption—Nonprofit Corporation Organized to Promote County, City, or Another Area

A nonprofit corporation organized solely to promote the public interest of a county, city, town, or another area in the state is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.058. Exemption—Nonprofit Corporation Organized for Religious Purposes

A nonprofit corporation organized for the purpose of religious worship is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.059. Exemption—Nonprofit Corporation Organized to Provide Burial Places

A nonprofit corporation organized to provide places of burial is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.060. Exemption—Nonprofit Corporation Organized for Agricultural Purposes

A nonprofit corporation organized to hold agricultural fairs and encourage agricultural pursuits is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.061. Exemption—Nonprofit Corporation Organized for Educational Purposes

A nonprofit corporation organized solely for educational purposes, including a corporation organized solely to provide a student loan fund or student scholarships, is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.062. Exemption—Nonprofit Corporation Organized for Public Charity

A nonprofit corporation organized for purely public charity is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.063. Exemption—Nonprofit Corporation Exempt From Federal Income Tax

(a) A nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as it existed on January 1, 1975, is exempted from the franchise tax.

(b) A corporation is entitled to an exemption under this section based on the corporation's exemption from the federal income tax if the corporation files with the comptroller evidence establishing the corporation's exemption.

(c) A corporation's exemption under this section may be established by furnishing the comptroller with a copy of the Internal Revenue Service's letter of exemption issued to the corporation. The copy of the letter may be filed with the comptroller within 15 months after the day that is the last day of a calendar month and that is nearest to the date of the corporation's charter or certificate of authority.

(d) If the Internal Revenue Service has not timely issued to a corporation a letter of exemption, evidence establishing the corporation's exemption under this section is sufficient if the corporation files with the comptroller within the 15-month period established by Subsection (c) of

this section evidence that the corporation has applied in good faith for the federal tax exemption.

(e) An exemption established under Subsection (c) or (d) of this section is to be recognized, after it is finally established, as of the date of the corporation's charter or certificate of authority.

(f) If a corporation timely files evidence with the comptroller under Subsection (d) of this section that it has applied for a federal tax exemption and if the application is finally denied by the Internal Revenue Service, this chapter does not impose a penalty on the corporation from the date of its charter or certificate of authority to the date of the final denial.

(g) If a corporation's federal tax exemption is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or maintain its qualification for the exemption, the corporation's exemption under this section ends on April 30 following the effective date of the withdrawal. (Title 122A, Art. 12.03, Secs. (1) (part), (2), (3), (4).)

Sec. 171.064. Exemption—Nonprofit Corporation Organized for Conservation Purposes

A nonprofit corporation organized solely to educate the public about the protection and conservation of fish, game, other wildlife, grasslands, and forests is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.065. Exemption—Nonprofit Corporation Organized to Provide Water Supply or Sewer Services

A nonprofit water supply or sewer service corporation organized in behalf of a city or town under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.066. Exemption—Nonprofit Corporation Involved With City Nautral Gas Facility

A nonprofit corporation organized to construct, acquire, own, lease, or operate a natural gas facility in behalf and for the benefit of a city or residents of a city is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.067. Exemption—Nonprofit Corporation Organized to Provide Convalescent Homes for Elderly

A nonprofit corporation organized to provide a convalescent home or other housing for persons who are at least 62 years old or who are handicapped or disabled is exempted from the franchise tax, whether or not the corporation is organized for purely public charity. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.068. Exemption—Nonprofit Corporation Organized to Provide Cooperative Housing

A nonprofit corporation engaged solely in the business of owning residential property for the purpose of providing cooperative housing for persons is exempted from the franchise tax. (Title 122A, Art. 12.03, Sec. (1) (part).)

Sec. 171.069. Exemption—Marketing Associations

A marketing association incorporated under Article 5737 et seq., Revised Civil Statutes of Texas, 1925, is exempted from the franchise tax. (R.C.S. Art. 5764 (part).)

Sec. 171.070. Exemption—Lodges

A lodge incorporated under Article 1399 et seq., Revised Civil Statutes of Texas, 1925, is exempted from the franchise tax. (R.C.S. Art. 1407.)

Sec. 171.071. Exemption—Farmers' Cooperative Society

A farmers' cooperative society incorporated under Article 2514 et seq., Revised Civil Statutes of Texas, 1925, is exempted from the franchise tax. (R.C.S. Art. 2518 (part).)

Sec. 171.072. Exemption—Housing Finance Corporation

A housing finance corporation incorporated under the Texas Housing Finance Corporations Act (Article 1269*l*—7, Vernon's Texas Civil Statutes) is exempted from the franchise tax. (V.A.C.S. Art. 1269*l*—7, Sec. 21 (part).)

Sec. 171.073. Exemption—Hospital Laundry Cooperative Association

A hospital laundry cooperative association incorporated under Chapter 56, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4437f—1, Vernon's Texas Civil Statutes), is exempted from the franchise tax. (V.A.C.S. Art. 4437f—1, Sec. 6 (part).)

Sec. 171.074. Exemption—Development Corporation

A development corporation incorporated under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is exempted from the franchise tax. (V.A.C.S. Art. 5190.6, Sec. 32 (part).)

Sec. 171.075. Exemption—Cooperative Association

A cooperative association incorporated under Chapter 195, Acts of the 64th Legislature, 1975 (Article 4447r, Vernon's Texas Civil Statutes), or under the Cooperative Association Act (Article 1396—50.01, Vernon's Texas Civil Statutes) is exempted from the franchise tax. (V.A.C.S. Art. 4447r, Sec. 6 (part); Art. 1396—50.01, Sec. 44 (part).)

Sec. 171.076. Exemption—Cooperative Credit Association

A cooperative credit association incorporated under Article 2508 et seq., Revised Civil Statutes of Texas, 1925, is exempted from the franchise tax. (R.C.S. Art. 2512 (part).)

Sec. 171.077. Exemption—Credit Union

A credit union incorporated under the Texas Credit Union Act (Article 2461—1.01 et seq., Vernon's Texas Civil Statutes) is exempted from the franchise tax. (V.A.C.S. Art. 2461—2.10 (part).)

Sec. 171.078. Exemption—Banks

A corporation chartered as a national, state, or private bank is exempted from the franchise tax. (New.)

Sec. 171.079. Exemption—Electric Cooperative Corporation

An electric cooperative corporation incorporated under the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes) is exempted from the franchise tax. (V.A.C.S. Art. 1528b, Sec. 30.)

Sec. 171.080. Exemption—Telephone Cooperative Corporations

A telephone cooperative corporation incorporated under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) is exempted from the franchise tax. (V.A.C.S. Art. 1528c, Sec. 29.)

Sec. 171.081. Exemption—Corporation Exempt by Another Law

Another statute that exempts a corporation from the franchise tax is not affected by this chapter. (Title 122A, Art. 12.03, Sec. (1) (part).)

[Sections 171.082–171.100 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF TAXABLE CAPITAL; ALLOCATION AND APPORTIONMENT

Sec. 171.101. Determination of Taxable Capital

The total taxable capital of a corporation is the sum of the corporation's:

(1) stated capital, as defined by Article 1.02, Texas Business Corporation Act; and

(2) surplus. (Title 122A, Art. 12.01, Sec. (1) (part).)

Sec. 171.102. Determination of Taxable Capital of Corporation in Process of Liquidation

(a) "Corporation in the process of liquidation" means a corporation that:

(1) adopts and pursues in good faith a plan to marshal the assets of the corporation, to pay or settle with the corporation's creditors and debtors, and to apportion the remaining assets of the corporation among the corporation's stockholders;

(2) adopts the plan by a resolution approved by the corporation's board of directors and ratified by a majority of the stockholders of record; and

(3) conducts the liquidation in the manner provided by the law of this state to dissolve a corporation.

(b) The taxable capital of a corporation in the process of liquidation is the difference between the amount of the corporation's stock issued and the amount of the liquidating dividends paid on the stock.

(c) The president and the secretary of the corporation shall file an affidavit with the comptroller containing information about the amount of liquidating dividends paid and a statement that the corporation is in the process of liquidation. The plan described by Subsection (a) of this section for the corporation's liquidation shall be attached to and be a part of the affidavit. (Title 122A, Art. 12.18.)

Sec. 171.103. Determination of Gross Receipts From Business Done in This State

The gross receipts of a corporation from its business done in this state is the sum of the corporation's receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale;

(2) each service performed in this state;

(3) each rental of property situated in this state;

(4) each royalty for the use of a patent or copyright in this state; and

(5) other business done in this state. (Title 122A, Art. 12.02, Sec. (1)(b).)

Sec. 171.104. Gross Receipts From Business Done in Texas: Deduction for Food and Medicine Receipts

A corporation may deduct from its receipts includable under Section 171.103(1) of this code the amount of the corporation's receipts from sales of the following items, if the items are shipped from outside this state and the receipts would be includable under Section 171.103(1) of this code in the absence of this section:

(1) food that is exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.314(a) of this code; and

(2) health care supplies that are exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.313 of this code. (Title 122A, Art. 12.02, Sec. (1)(c) (part).)

Sec. 171.105. Determination of Gross Receipts From Entire Business

(a) The gross receipts of a corporation from its entire business is the sum of the corporation's receipts from:

(1) each sale of the corporation's tangible personal property;

(2) each service, rental, or royalty; and

(3) other business.

(b) If a corporation sells an investment or capital asset, the corporation's gross receipts from its entire business include only the net gain from the sale. (Title 122A, Art. 12.02, Sec. (1)(d).)

Sec. 171.106. Determination of Amount of Taxable Capital Allocated to This State

The part of a corporation's taxable capital that is allocated to this state and that is used to determine the amount of the tax imposed by this chapter is equal to the corporation's total taxable capital multiplied by a fraction, the numerator of which is the corporation's gross receipts from business done in this state and the denominator of which is the corporation's gross receipts from its entire business. (Title 122A, Art. 12.02, Sec. (1)(a).)

Sec. 171.107. Deduction of Cost of Solar Energy Device From Taxable Capital Allocated to This State

(a) In this section, "solar energy device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

(b) A corporation may deduct from its taxable capital allocated to this state the amortized cost of a solar energy device if:

(1) the device is acquired by the corporation for heating or cooling or for the production of power;

(2) the device is used in this state by the corporation; and

(3) the cost of the device is amortized in accordance with Subsection (c) of this section.

(c) The amortization of the cost of a solar energy device must:

(1) be for a period of at least 60 months;

(2) provide for equal monthly amounts;

(3) begin on the month in which the device is placed in service in this state; and

(4) cover only a period in which the device is in use in this state.

(d) A corporation that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period in which a deduction is to be made. On the request of the comptroller, the corporation shall file with the comptroller proof of the cost of the solar energy device or proof of the device's operation in this state. (Title 122A, Art. 12.03, Sec. (1) (part); Art. 12.01, Sec. (6).)

Sec. 171.108. Alternate Method of Determining Amount of Taxable Capital Allocated to This State

If the allocation and apportionment provisions of Sections 171.103, 171.104, 171.105, and 171.106 of this code do not fairly represent the extent of the corporation's business done in this state, the corporation is

entitled to request and the comptroller may grant permission for the corporation to use, with respect to all or any part of the corporation's business activity, an alternate allocation and apportionment method by:

(1) a separate accounting;

(2) inclusion of additional factors that will fairly represent the corporation's business activity in this state; or

(3) the employment of any other method that equitably allocates and apportions the taxpayer's capital. (Title 122A, Art. 12.02, Sec. (2).)

[Sections 171.109–171.150 reserved for expansion]

SUBCHAPTER D. PAYMENT OF TAX

Sec. 171.151. Period Covered by Tax

The franchise tax shall be paid for each of the following:

(1) an initial period beginning on the date that the corporation files its charter or is granted a certificate of authority and ending on the day before the first anniversary of that date;

(2) a second period beginning on the first anniversary of the date that the corporation files its charter or is granted its certificate of authority and ending on April 30 following that date; and

(3) after the initial and second periods have expired, a regular annual period beginning each year on May 1 and ending on the following April 30. (Title 122A, Art. 12.06, Sec. (2) (part); Art. 12.01, Sec. (1) (part).)

Sec. 171.152. Date on Which Payment is Due

(a) Payment of the tax covering the initial period is due within 90 days after the date that the initial period ends.

(b) Payment of the tax covering the second period is due on the same date as the tax covering the initial period.

(c) Payment of the tax covering the regular annual period is due June 15 of each year. However, if the first anniversary of the date that the corporation files its charter or is granted its certificate of authority is after December 31 and before May 1, the payment of the tax covering the first regular annual period is due on the same date as the tax covering the initial period. (Title 122A, Art. 12.06, Sec. (2) (part); Art. 12.065.)

Sec. 171.153. Business on Which Tax is Based

(a) The tax covering the initial period is based on the business done by the corporation during the period beginning on the day the corporation files its charter or is granted a certificate of authority and ending on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business.

(b) The tax covering the second period is based on the same business on which the tax covering the initial period is based and is to be prorated based on the length of the second period.

(c) The tax covering the regular annual period is based on the business done by the corporation during its fiscal year that ends in the year before the year in which the tax is due. However, if the first anniversary of the date that the corporation files its charter or is granted its certificate of authority is after December 31 and before May 1, the tax covering the first regular annual period is based on the same business on

which the tax covering the initial period is based. (Title 122A, Art. 12.-06, Sec. (2) (part); Art. 12.08, Sec. (1) (part).)

Sec. 171.154. Payment to Comptroller

A corporation on which a tax is imposed by this chapter shall pay the tax to the comptroller. (Title 122A, Art. 12.01, Sec. (1) (part).)

Sec. 171.155. Payment of Tax Deposit

(a) An applicant for a charter under the Texas Business Corporation Act or the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes) or for a certificate of authority under the Texas Business Corporation Act must pay to the comptroller as a requirement for the charter or certificate a tax deposit of $100.

(b) The comptroller shall apply the deposit as a credit against any tax imposed by this chapter on the corporation receiving the charter or certificate of authority.

(c) After the secretary of state issues the charter or certificate of authority, the comptroller may not refund the deposit for any reason. (Title 122A, Art. 12.06, Secs. (1), (2) (part).)

Sec. 171.156. Payment of Additional Tax Deposit by Foreign Corporation

(a) At the time that a foregin corporation applies for a certificate of authority to do business in this state, the corporation shall pay to the comptroller a tax deposit of $500.

(b) The comptroller shall place the deposit in a trust fund and hold the deposit during the time that the foreign corporation does business in this state. The deposit is to be used to ensure that the foreign corporation files each report required by this chapter and pays any filing fee, tax, penalty, or interest imposed by this chapter.

(c) If a foreign corporation's certificate of authority is forfeited under this chapter, the tax deposit is forfeited. The forfeiture of the deposit does not bar the state's recovery of the amount of the tax due under this chapter that is in excess of the amount of the forfeited deposit. However, if the foreign corporation pays the amount of the tax due under this chapter and files each tax report required by this chapter, the comptroller shall refund to the corporation the amount of the deposit in excess of any tax, penalty, and interest due under this chapter.

(d) If a foreign corporation stops doing business in this state before forfeiture of its certificate of authority and if the corporation demonstrates that each tax report required by this chapter has been filed and the tax and penalty imposed by this chapter have been paid, the comptroller shall refund to the corporation's agent designated under Section 171.-354 of this chapter the remaining balance of the deposit. (Title 122A, Art. 12.06, Sec. (3).)

Sec. 171.157. Exemption of Foreign Corporation From Tax Deposit Requirement

(a) A foreign corporation is exempted from the payment of the tax deposit required under Section 171.156 of this code if the comptroller determines that the corporation:

(1) continuously has maintained good standing relating to the tax for three consecutive reporting years; or

(2) is exempted by law from the tax.

(b) If a foreign corporation has paid the tax deposit and the corporation becomes exempt from its payment, the comptroller shall refund the deposit to the corporation.

(c) A foreign corporation's exemption from the payment of the tax deposit ends if the comptroller determines that the corporation:

(1) has not filed a report, paid a tax, or made another payment as required by this chapter; or

(2) no longer qualifies for an exemption from the tax.

(d) At the time that a foregin corporation's exemption from the payment of the tax deposit ends, the comptroller shall notify the corporation that it must pay the tax deposit. (Title 122A, Art. 12.06, Sec. (4).)

Sec. 171.158. Payment by Foreign Corporation Before Withdrawal From State

(a) Except as provided by Subsection (b) of this section, a foreign corporation holding a certificate of authority to do business in this state may withdraw from doing business in this state by filing a certificate of withdrawal with the secretary of state. The secretary of state shall file the certificate of withdrawal as provided by law.

(b) The foreign corporation may not withdraw from doing business in this state unless it has paid, before filing the certificate of withdrawal, any tax or penalty imposed by this chapter on the corporation. (Title 122A, Art. 12.04.)

[Sections 171.159–171.200 reserved for expansion]

SUBCHAPTER E. REPORTS AND RECORDS

Sec. 171.201. Initial Report

(a) A corporation on which the franchise tax is imposed shall file an initial report with the comptroller containing:

(1) information showing the financial condition of the corporation on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business;

(2) the name and address of each officer and director of the corporation;

(3) the name and address of the agent of the corporation designated under Section 171.354 of this code; and

(4) other information required by the comptroller.

(b) The corporation shall file the report within 90 days after the date that the initial period established by Section 171.151(1) of this code ends. (Title 122A, Art. 12.06, Sec. (2) (part); Art. 12.09; Art. 12.11 (part); Art. 12.12 (part).)

Sec. 171.202. Annual Report

(a) A corporation on which the franchise tax is imposed shall file an annual report with the comptroller containing:

(1) information showing the financial condition of the corporation on the last day of the corporation's fiscal year that ends in the year before the year in which the tax is due;

(2) the name and address of each officer and director of the corporation;

(3) the name and address of the agent of the corporation designated under Section 171.354 of this code; and

(4) other information required by the comptroller.

(b) If the tax is determined by using the alternate rate of tax established by Section 171.004 of this code, the corporation shall file an annual report with the comptroller containing information required by the comptroller to be filed. The comptroller shall prescribe the form of the report. The corporation shall file with the report a signed copy of its

federal income tax return for the tax reporting period that ends in the year before the year in which the tax is due.

(c) The corporation shall file the report before June 16 of each year. The report shall be filed on forms supplied by the comptroller. (Title 122A, Art. 12.01, Sec. (1) (part); Art. 12.08; Art. 12.11 (part); Art. 12.-12 (part); Art. 12.19, Sec. (3) (part).)

Sec. 171.203. Public Information Report

(a) A corporation on which the franchise tax is imposed shall file a report with the comptroller containing:

(1) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation;

(2) the name of each corporation that owns a 10 percent or greater interest in the corporation filing the report;

(3) the name, title, and mailing address of each officer and director of the corporation;

(4) the name and address of the agent of the corporation designated under Section 171.354 of this code; and

(5) the address of the corporation's principal office and principal place of business.

(b) The corporation shall file the report once a year on a form prescribed by the comptroller.

(c) The comptroller shall forward the report to the secretary of state. (Title 122A, Art. 12.12 (part); Art. 12.11 (part); Art. 12.10, Sec. (a) (part).)

Sec. 171.204. Information Report

To determine the amount of the franchise tax or to determine the correctness of a franchise tax report, the comptroller may require an officer of a corporation on which the tax is imposed to file an information report with the comptroller stating the amount of the corporation's undivided profits and other surplus. (Title 122A, Art. 12.07.)

Sec. 171.205. Additional Information Required by Comptroller

The comptroller may require a corporation on which the franchise tax is imposed to furnish to the comptroller information from the corporation's books and records that has not been filed previously and that is necessary for the comptroller to determine the amount of the tax. (Title 122A, Art. 12.12 (part).)

Sec. 171.206. Confidential Information

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter. (Title 122A, Art. 12.10, Sec. (a) (part); Art. 12.19, Sec. (3) (part).)

Sec. 171.207. Information Not Confidential

The following information is not confidential and shall be made open to public inspection:

(1) information contained in a document filed under this chapter with a county clerk as notice of a tax lien; and

(2) information contained in a report required by Section 171.203 of this code. (Title 122A, Art. 12.10, Sec. (a) (part); Art. 12.12 (part).)

Sec. 171.208. Prohibition of Disclosure of Information

A person, including a state officer or employee or a shareholder of a corporation, who has access to a report filed under this chapter may not make known in a manner not permitted by law the amount or source of the corporation's income, profits, losses, expenditures, or other information in the report relating to the financial condition of the corporation. (Title 122A, Art. 12.10A (part).)

Sec. 171.209. Right of Shareholder to Examine or Receive Reports

If a person owning at least one share of outstanding stock of a corporation on whom the franchise tax is imposed presents evidence of the ownership to the comptroller, the person is entitled to examine or receive a copy of an initial or annual report that is filed under Section 171.201 or 171.202 of this code and that relates to the corporation. (Title 122A, Art. 12.10, Sec. (a) (part).)

Sec. 171.210. Permitted Use of Confidential Information

(a) To enforce this chapter, the comptroller or attorney general may use information made confidential by this chapter.

(b) The comptroller or attorney general may authorize the use of the confidential information in a judicial proceeding in which the state is a party. The comptroller or attorney general may authorize examination of the confidential information by:

(1) another state officer of this state;

(2) a law enforcement official of this state; or

(3) a tax official of another state or an official of the federal government if the other state or the federal government has a reciprocal arrangement with this state. (Title 122A, Art. 12.10, Sec. (b).)

Sec. 171.211. Examination of Corporate Records

To determine the franchise tax liability of a corporation, the comptroller, the state auditor, or the state auditor's authorized representative may investigate or examine the records of the corporation. (Title 122A, Art. 12.12 (part); Art. 12.19, Sec. (3) (part).)

[Sections 171.212–171.250 reserved for expansion]

SUBCHAPTER F. FORFEITURE OF CORPORATE PRIVILEGES

Sec. 171.251. Forfeiture of Corporate Privileges

The comptroller shall forfeit the corporate privileges of a corporation on which the franchise tax is imposed if the corporation:

(1) does not file, in accordance with this chapter and within 90 days after the date it is due, an initial report required by Section 171.201 of this code;

(2) does not file, in accordance with this chapter and before September 16 of the year in which it is due, an annual report that is required by Section 171.202 of this code;

(3) does not pay, before September 16 of the year in which it is due, a tax imposed by this chapter that is due under Section 171.152(c) of this code on the preceding June 15 or does not pay, before September 16, a penalty imposed by this chapter relating to that tax;

(4) does not pay, within 90 days after the date it is due, a tax imposed by this chapter that is due under Section 171.152 of this code

on a date other than June 15 or does not pay, within those 90 days, a penalty imposed by this chapter relating to that tax; or

(5) does not permit the comptroller, the state auditor, or the state auditor's authorized representative to examine under Section 171.211 of this code the corporation's records. (Title 122A, Art. 12.-14, Sec. (2) (part); Art. 12.12 (part).)

Sec. 171.252. Effects of Forfeiture

If the corporate privileges of a corporation are forfeited under this subchapter:

(1) the corporation shall be denied the right to sue or defend in a court of this state; and

(2) each director or officer of the corporation is liable for a debt of the corporation as provided by Section 171.255 of this code.

Sec. 171.253. Suit on Cause of Action Arising Before Forfeiture

In a suit against a corporation on a cause of action arising before the forfeiture of the corporate privileges of the corporation, affirmative relief may not be granted to the corporation unless its corporate privileges are revived under this chapter. (Title 122A, Art. 12.14, Sec. (2) (part).)

Sec. 171.254. Exception to Forfeiture

The forfeiture of the corporate privileges of a corporation does not apply to the privilege to defend in a suit to forfeit the corporation's charter or certificate of authority. (Title 122A, Art. 12.14, Sec. (2) (part).)

Sec. 171.255. Liability of Director and Officers

(a) If the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. The liability includes liability for any tax or penalty imposed by this chapter on the corporation that becomes due and payable after the date of the forfeiture.

(b) The liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership.

(c) A director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred:

(1) over the director's objection; or

(2) without the director's knowledge and that the exercise of reasonable diligence to become acquainted with the affairs of the corporation would not have revealed the intention to create the debt.

(d) If a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this chapter, the liability under this section of a director or officer of the corporation is not affected by the revival of the charter or certificate and the corporate privileges. (Title 122A, Art. 12.14, Sec. (3); Art. 12.17, Sec. (3) (part).)

Sec. 171.256. Notice of Forfeiture

(a) If the comptroller proposes to forfeit the corporate privileges of a corporation, the comptroller shall notify the corporation that the forfeiture will occur without a judicial proceeding unless the corporation:

(1) files, within the time established by Section 171.251 of this code, the report to which that section refers; or

(2) pays, within the time established by Section 171.251 of this code, the delinquent tax and penalty to which that section refers.

(b) The notice shall be written or printed and shall be verified by the seal of the comptroller's office.

(c) The comptroller shall mail the notice to the corporation within 45 days after the day on which the report, tax, or penalty is due. The notice shall be addressed to the corporation and mailed to the address named in the corporation's charter as its principal place of business or to another known place of business of the corporation.

(d) The comptroller shall keep at the comptroller's office a record of the date on which the notice is mailed. For the purposes of this chapter, the notice and the record of the mailing date constitute legal and sufficient notice of the forfeiture. (Title 122A, Art. 12.15 (part).)

Sec. 171.257. Judicial Proceeding Not Required for Forfeiture

The forfeiture of the corporate privileges of a corporation is effected by the comptroller without a judicial proceeding. (Title 122A, Art. 12.14, Sec. (2) (part).)

Sec. 171.258. Revival of Corporate Privileges

The comptroller shall revive the corporate privileges of a corporation if the corporation, before the forfeiture of its charter or certificate of authority, pays any tax, penalty, or interest due under this chapter. (Title 122A, Art. 12.15 (part).)

[Sections 171.259–171.300 reserved for expansion]

SUBCHAPTER G. FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY

Sec. 171.301. Grounds for Forfeiture of Charter or Certificate of Authority

It is a ground for the forfeiture of a corporation's charter or certificate of authority if:

(1) the corporate privileges of the corporation are forfeited under this chapter and the corporation does not pay, within 120 days after the date the corporate privileges are forfeited, the amount necessary for the corporation to revive under this chapter its corporate privileges; or

(2) the corporation does not permit the comptroller, the state auditor, or the state auditor's authorized representative to examine the corporation's records under Section 171.211 of this code. (Title 122A, Art. 12.15 (part); Art. 12.12 (part).)

Sec. 171.302. Certification by Comptroller

After the 120th day after the date that the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall certify the name of the corporation to the attorney general and the secretary of state. (Title 122A, Art. 12.15 (part).)

Sec. 171.303. Suit for Judicial Forfeiture

On receipt of the comptroller's certification, the attorney general shall bring suit to forfeit the charter or certificate of authority of the corporation if a ground exists for the forfeiture of the charter or certificate. (Title 122A, Art. 12.15 (part); Art. 12.16, Sec. (1) (part).)

Sec. 171.304. Record of Judicial Forfeiture

(a) If a district court forfeits a corporation's charter or certificate of authority under this chapter, the clerk of the court shall promptly mail to

the secretary of state a certified copy of the court's judgment. On receipt of the copy of the judgment, the secretary of state shall inscribe on the corporation's record at the secretary's office the words "Judgment of Forfeiture" and the date of the judgment.

(b) If an appeal of the judgment is perfected, the clerk of the court shall promptly certify to the secretary of state that the appeal has been perfected. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office the word "Appealed" and the date on which the appeal was perfected.

(c) If final disposition of an appeal is made, the clerk of the court making the disposition shall promptly certify to the secretary of state the type of disposition made and the date of the disposition. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office a brief note of the type of final disposition made and the date of the disposition. (Title 122A, Art. 12.17, Sec. (1).)

Sec. 171.305. Revival of Charter or Certificate of Authority After Judicial Forfeiture

A corporation whose charter or certificate of authority is judicially forfeited under this chapter is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

(1) the corporation files each report that is required by this chapter and that is delinquent;

(2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the suit under Section 171.306 of this code to set aside forfeiture is filed; and

(3) the forfeiture of the corporation's charter or certificate is set aside in a suit under Section 171.306 of this code. (Title 122A, Art. 12.17, Sec. (3) (part).)

Sec. 171.306. Suit to Set Aside Judicial Forfeiture

If a corporation's charter or certificate of authority is judicially forfeited under this chapter, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may bring suit in a district court of Travis County in the name of the corporation to set aside the forfeiture of the charter or certificate. The suit must be in the nature of a bill of review. The secretary of state and attorney general must be made defendants in the suit. (Title 122A, Art. 12.17, Sec. (3) (part).)

Sec. 171.307. Record of Suit to Set Aside Judicial Forfeiture

If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the secretary of state shall inscribe on the corporation's record in the secretary's office the words "Charter Revived by Court Order" or "Certificate Revived by Court Order," a citation to the suit, and the date of the court's judgment. (Title 122A, Art. 12.17, Sec. (3) (part).)

Sec. 171.308. Corporate Privileges After Judicial Forfeiture is Set Aside

If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation and shall inscribe on the corporation's record in the comptroller's office a note of the revival. (Title 122A, Art. 12.17, Sec. (3) (part).)

Sec. 171.309. Forfeiture by Secretary of State

The secretary of state may forfeit the charter or certificate of authority of a corporation if:

(1) the secretary receives the comptroller's certification under Section 171.302 of this code;

(2) the corporation does not revive its forfeited corporate privileges before January 1 following the date that the corporate privileges were forfeited; and

(3) the corporation does not have assets from which a judgment for any tax, penalty, or court costs imposed by this chapter may be satisfied. (Title 122A, Art. 12.17, Sec. (2) (part).)

Sec. 171.310. Judicial Proceeding Not Required for Forfeiture by Secretary of State

The forfeiture by the secretary of state of a corporation's charter or certificate of authority under this chapter is effected without a judicial proceeding. (Title 122A, Art. 12.17, Sec. (2) (part).)

Sec. 171.311. Record of Forfeiture by Secretary of State

The secretary of state shall effect a forfeiture of a corporation's charter or certificate of authority under this chapter by inscribing on the corporation's record in the secretary's office the words "Charter Forfeited" or "Certificate Forfeited," the date on which this inscription is made, and a citation to this chapter as authority for the forfeiture. (Title 122A, Art. 12.17, Sec. (2) (part).)

Sec. 171.312. Revival of Charter or Certificate of Authority After Forfeiture by Secretary of State

A corporation whose charter or certificate of authority is forfeited under this chapter by the secretary of state is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

(1) the corporation files each report that is required by this chapter and that is delinquent;

(2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the request under Section 171.313 of this code to set aside forfeiture is made; and

(3) the forfeiture of the corporation's charter or certificate is set aside in a proceeding under Section 171.313 of this code. (Title 122A, Art. 12.17, Sec. (3).)

Sec. 171.313. Proceeding to Set Aside Forfeiture by Secretary of State

(a) If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may request in the name of the corporation that the secretary of state set aside the forfeiture of the charter or certificate.

(b) If a request is made, the secretary of state shall determine if each delinquent report has been filed and any delinquent tax, penalty, or interest has been paid. If each report has been filed and the tax, penalty, or interest has been paid, the secretary shall set aside the forfeiture of the corporation's charter or certificate of authority. (Title 122A, Art. 12.17, Sec. (3) (part).)

Sec. 171.314. Corporate Privileges After Forfeiture by Secretary of State is Set Aside

If the secretary of state sets aside under this chapter the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation. (Title 122A, Art. 12.-17, Sec. (3) (part).)

Sec. 171.315. Use of Corporate Name After Revival of Charter or Certificate of Authority

If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state and if the corporation requests the secretary to set aside the forfeiture under Section 171.313 of this code, the corporation shall determine from the secretary whether the corporation's name is available for use. If the name is not available, the corporation shall amend its charter or certificate to change its name. (Title 122A, Art. 12.17, Sec. (3) (part).)

[Sections 171.316–171.350 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

Sec. 171.351. Venue of Suit to Enforce Chapter

Venue of a civil suit against a corporation to enforce this chapter is either in a county where the corporation's principal office is located according to its charter or certificate of authority or in Travis County. (Title 122A, Art. 12.16, Sec. (1) (part).)

Sec. 171.352. Authority to Restrain or Enjoin

To enforce this chapter, a court may restrain or enjoin a violation of this chapter. (Title 122A, Art. 12.16, Sec. (1) (part).)

Sec. 171.353. Appointment of Receiver

If a court forfeits a corporation's charter or certificate of authority, the court may appoint a receiver for the corporation and may administer the receivership under the laws relating to receiverships. (Title 122A, Art. 12.16, Sec. (1) (part).)

Sec. 171.354. Agent for Service of Process

Each corporation on which a tax is imposed by this chapter shall designate a resident of this state as the corporation's agent for the service of process. (Title 122A, Art. 12.11 (part).)

Sec. 171.355. Service of Process on Secretary of State

(a) Legal process may be served on a domestic corporation by serving it on the secretary of state if the process relates to the forfeiture of the corporation's charter or to the collection of a tax or penalty imposed by this chapter and:

(1) if the local agent of the corporation or if the officers named in the corporation's charter or annual report on file with the secretary of state do not reside or cannot be located in the county in which the corporation's principal office, as stated in the charter, is located; or

(2) if the principal office of the corporation is not maintained or cannot be located in the county in which the charter states that the office is located.

(b) Complete and valid service of process is made on a corporation through the secretary of state by delivering duplicate copies of the process to the secretary of state or the assistant secretary of state.

(c) On receipt of legal process under this section, the secretary of state promptly shall forward to the corporation by registered mail a copy of the process. The copy of the process shall be mailed to the address named in the corporation's charter as its principal place of business or to another place of business of the corporation as shown by the records in the secretary of state's office.

(d) The failure of the secretary of state to mail a copy of legal process to a corporation does not affect the validity of the service of process. It is competent and sufficient proof of the service of process that the secretary of state certifies under the secretary's official seal the receipt of the process.

(e) The secretary of state shall keep a record of each legal process served on the secretary under this section showing the date and time of the receipt of the process and the secretary's action on the process.

(f) This section is cumulative of other laws relating to service of process. (Title 122A, Art. 12.16, Sec. (2).)

Sec. 171.356. Tax Lien

The state has a prior lien on a corporation's property to secure the payment of all taxes and penalties imposed by this chapter. (Title 122A, Art. 12.13 (part).)

Sec. 171.357. Notice of Lien

(a) If the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall file:

(1) a tax lien notice with the clerk of the county in which the principal place of business of the corporation, as stated in its charter or certificate of authority, is located; and

(2) a copy of the tax lien notice with the clerk of each county in which the comptroller believes the corporation has real or personal property.

(b) The notice shall be of any tax or penalty due under this chapter by the corporation and the liens securing their payment. The notice shall include the name of the corporation on whom the tax or penalty is imposed, the amount of the tax or penalty due, and information about any tax or penalty that may become due. The notice shall be on a form prepared or approved by the attorney general.

(c) The county clerk with whom a tax lien notice is filed shall record and index the notice in the clerk's tax lien records. (Title 122A, Art. 12.-13 (part).)

Sec. 171.358. Effect of Tax Lien Notice

A tax lien notice that is filed, recorded, and indexed as provided by this chapter is notice to each party dealing with the real or personal property of a corporation that:

(1) a tax or penalty is due and may become due under this chapter by the corporation; and

(2) the state has liens securing the payment of the tax or penalty. (Title 122A, Art. 12.13 (part).)

Sec. 171.359. Release of Lien

(a) The comptroller may make and deliver:

(1) a complete release of a lien created by this chapter if full payment of any tax or penalty secured by the lien is made; or

(2) a partial release of a lien created by this chapter if partial payment of any tax or penalty secured by the lien is made in an

amount that the comptroller considers adequate and proper under the circumstances.

(b) A release by the comptroller shall be on a form prepared or approved by the attorney general. (Title 122A, Art. 12.13 (part).)

Sec. 171.360. Limitation on Suit to Enforce Lien

A suit for the enforcement of a lien created by this chapter may not be begun more than two years after the date that the corporation against whose property the lien is imposed forfeits under this chapter its corporate privileges. (Title 122A, Art. 12.13 (part).)

Sec. 171.361. Penalty for Disclosure of Information on Report

(a) A person commits an offense if the person violates Section 171.-208 of this code prohibiting the disclosure of information on a report filed under this chapter.

(b) An offense under this section is punishable by a fine of not more than $1,000, confinement in jail for not more than one year, or both. (Title 122A, Art. 12.10A (part).)

Sec. 171.362. Penalty for Failure to Pay Tax or File Report

(a) If a corporation on which a tax is imposed by this chapter fails to pay the tax when it is due and payable or fails to file a report required by this chapter when it is due, the corporation is liable for a penalty of five percent of the amount of the tax due.

(b) If the tax is not paid or the report is not filed within 30 days after the due date, a penalty of an additional five percent of the tax due is imposed.

(c) The minimum penalty under this section is $1. (Title 122A, Art. 12.14, Sec. (1) (part).)

[Sections 171.363–171.400 reserved for expansion]

SUBCHAPTER I. DISPOSITION OF REVENUE

Sec. 171.401. Revenue Deposited in General Revenue Fund

The revenue from the tax imposed by this chapter shall be deposited to the credit of the general revenue fund. (Title 122A, Art. 24.01 (part).)

SUBTITLE G. GROSS RECEIPTS TAXES

CHAPTER 181. CEMENT PRODUCTION TAX

SUBCHAPTER A. TAX

Section

181.001. Tax Imposed
181.002. Rate of Tax
181.003. Payment of Tax
181.004. Exemption: Interstate Commerce

[Sections 181.005–181.050 reserved for expansion]

SUBCHAPTER B. REPORTS AND RECORDS

181.051. Report
181.052. Records

[Sections 181.053–181.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Section
181.101. Interest on Delinquent Taxes
181.102. Tax Lien
181.103. Prohibition on Delinquent Taxpayer; Injunction
181.104. Penalty
181.105. Criminal Penalty

[Sections 181.106–181.150 reserved for expansion]

SUBCHAPTER D. RESTRICTION ON MUNICIPALITIES

181.151. Restriction on Taxing Authority of Municipalities

[Sections 181.152–181.200 reserved for expansion]

SUBCHAPTER E. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

181.201. Occupation Tax
181.202. Allocation of Tax Revenue

SUBTITLE G. GROSS RECEIPTS TAXES

CHAPTER 181. CEMENT PRODUCTION TAX

SUBCHAPTER A. TAX

Sec. 181.001. Tax Imposed

(a) A tax is imposed on a person who:

(1) manufactures or produces cement in, or imports cement into, the state; and

(2) distributes or sells the cement in intrastate commerce or uses the cement in the state.

(b) The tax is computed on the amount of cement distributed, sold, or used by the person for the first time in intrastate commerce.

(c) The tax applies to only one distribution, sale, or use of cement. (Title 122A, Art. 18.01 (part).)

Sec. 181.002. Rate of Tax

The rate of the tax imposed by this chapter is $0.0275 for each 100 pounds or fraction of 100 pounds of taxable cement. (Title 122A, Art. 18.01 (part).)

Sec. 181.003. Payment of Tax

(a) The person on whom the tax is imposed by this chapter shall pay the tax to the comptroller at the comptroller's Austin office.

(b) The tax payment is due on the 25th day of each month, and the amount of the tax is computed on the amount of business done during the preceding month by the person on whom the tax is imposed. (Title 122A, Art. 18.02(1) (part).)

Sec. 181.004. Exemption: Interstate Commerce

The tax imposed by this chapter is not computed on an interstate distribution or sale of cement. (Title 122A, Art. 18.04 (part).)

[Sections 181.005–181.050 reserved for expansion]

SUBCHAPTER B. REPORTS AND RECORDS

Sec. 181.051. Report

On or before the 25th day of each month, a person on whom the tax is imposed by this chapter shall file with the comptroller a report stating:

(1) the amount of taxable cement distributed, sold, or used by the person during the preceding month;

(2) the amount of cement produced in, imported into, or exported out of the state by the person during the preceding month; and

(3) other information that the comptroller requires to be in the report. (Title 122A, Art. 18.02(1) (part).)

Sec. 181.052. Records

(a) A person on whom the tax is imposed by this chapter shall keep a record of the business conducted by the person and of other information that the comptroller requires to be kept.

(b) The record is an open record to the comptroller and the attorney general.

(c) The comptroller shall adopt rules to enforce this section. (Title 122A, Art. 18.02(2).)

[Sections 181.053–181.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 181.101. Interest on Delinquent Taxes

A tax imposed by this chapter that is delinquent draws interest as provided by Section 111.060 of this code. (Title 122A, Art. 18.03 (part).)

Sec. 181.102. Tax Lien

The state has a prior lien for a tax or interest on a tax imposed by this chapter that is delinquent or for a penalty imposed by this chapter. The lien is on the property used in the business of distributing, selling, or using cement by the person on whom the tax is imposed by this chapter. (Title 122A, Art. 18.03 (part).)

Sec. 181.103. Prohibition on Delinquent Taxpayer; Injunction

(a) A person who is delinquent in the payment of the tax imposed by this chapter may not engage in an activity or participate in a transaction for which the person is taxed by this chapter.

(b) The attorney general may sue in Travis County or another county having venue to enjoin a person from violating this section. (Title 122A, Art. 18.02(3).)

Sec. 181.104. Penalty

(a) A person on whom the tax is imposed by this chapter and who does not pay the tax when it is due forfeits to the state a penalty of five percent of the amount of tax delinquent.

(b) If the tax imposed by this chapter is not paid within 30 days after it is due, the person on whom the tax is imposed forfeits to the state a penalty of an additional five percent of the amount of tax delinquent.

(c) The minimum penalty under this section is $1. (Title 122A, Art. 18.03 (part).)

Sec. 181.105. Criminal Penalty

(a) A person who violates a provision of this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than $25 nor more than $1,000. A separate offense is committed each day a violation occurs. (Title 122A, Art. 18.03 (part).)

[Sections 181.106–181.150 reserved for expansion]

SUBCHAPTER D. RESTRICTION ON MUNICIPALITIES

Sec. 181.151. Restriction on Taxing Authority of Municipalities

A municipal corporation may not impose an occupation tax similar to the tax imposed by this chapter. (Title 122A, Art. 18.04 (part).)

[Sections 181.152–181.200 reserved for expansion]

SUBCHAPTER E. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

Sec. 181.201. Occupation Tax

The tax imposed by this chapter is an occupation tax. (New.)

Sec. 181.202. Allocation of Tax Revenue

One-fourth of the revenue from the tax imposed by this chapter shall be deposited to the credit of the available school fund and three-fourths to the omnibus tax clearance fund. (Title 122A, Art. 24.01 (part).)

CHAPTER 182. MISCELLANEOUS GROSS RECEIPTS TAXES

SUBCHAPTER A. TELEGRAPH COMPANIES

Section
182.001. Definitions
182.002. Imposition and Rate of Tax
182.003. Political Subdivisions of the State
182.004. Franchise Tax

[Sections 182.005–182.020 reserved for expansion]

SUBCHAPTER B. UTILITY COMPANIES

182.021. Definitions
182.022. Imposition and Rate of Tax
182.023. Payment of Tax
182.024. Political Subdivisions
182.025. Charges by a City
182.026. Subchapter Not Applicable

[Sections 182.027–182.040 reserved for expansion]

SUBCHAPTER C. CAR COMPANIES

182.041. Definitions
182.042. Imposition and Rate of Tax

[Sections 182.043–182.060 reserved for expansion]

SUBCHAPTER D. TELEPHONE COMPANIES

182.061. Definitions
182.062. Imposition and Rate of Tax
182.063. Political Subdivisions
182.064. Subchapter Not Applicable

[Sections 182.065–182.080 reserved for expansion]

SUBCHAPTER E. TAX COLLECTIONS AND BUSINESS PERMITS

Section
182.081. Reports
182.082. Tax Payments: Due Date
182.083. Payment of Tax if Business Begun After Beginning of Quarter
182.084. Additional Reports
182.085. Forms
182.086. Permit Required; Form of Permit
182.087. Application and Issuance of Permit
182.088. Suspension of Permit

[Sections 182.089–182.100 reserved for expansion]

SUBCHAPTER F. PENALTIES

182.101. Failure to Report
182.102. Penalty for Failure to Pay Tax
182.103. Suits
182.104. Transacting Business Without a Permit: Penalty

[Sections 182.105–182.120 reserved for expansion]

SUBCHAPTER G. NATURE AND ALLOCATION OF TAX

182.121. Nature of Tax
182.122. Allocation of Tax

CHAPTER 182. MISCELLANEOUS GROSS RECEIPTS TAXES

SUBCHAPTER A. TELEGRAPH COMPANIES

Sec. 182.001. Definitions

In this subchapter:

(1) "Telegraph company" means a person who:

(A) owns or operates a telegraph line or a telegraph station in this state; and

(B) charges for sending telegraph messages.

(2) "Business" means the transmission of telegraph messages, at full or half rate, and the lease or use of wires or equipment, but does not include business transacted for agencies of the United States government for which rates are set by the postmaster general. (Title 122A, Art. 11.02, Sec. (1) (part).)

Sec. 182.002. Imposition and Rate of Tax

(a) A tax is imposed on each telegraph company on the gross receipts from business done in this state.

(b) The tax rates are:

(1) 1.5 percent of the gross receipts from business done outside an incorporated city or town or in an incorporated city or town having a population of 2,500 or less;

(2) 1.75 percent of the gross receipts from business done in an incorporated city or town having a population of more than 2,500 but not more than 10,000; and

(3) 2.275 percent of the gross receipts from business done in an incorporated city or town having a population of more than 10,000. (Title 122A, Art. 11.02, Sec. (1) (part).)

Sec. 182.003. Political Subdivisions of the State

No city or other political subdivision of this state may impose, on a telegraph company taxed under Section 182.002 of this code, an occupation tax or any charge for the privilege of doing business. (Title 122A, Art. 11.02, Sec. (2) (part).)

Sec. 182.004. Franchise Tax

(a) This subchapter does not prohibit the collection by a city of a franchise tax in effect on October 31, 1936.

(b) This subchapter does not affect any contracts made between a city and a franchise holder. (Title 122A, Art. 11.02, Sec. (2) (part).)

[Sections 182.005–182.020 reserved for expansion]

SUBCHAPTER B. UTILITY COMPANIES

Sec. 182.021. Definitions

In this subchapter:

(1) "Utility company" means a person who owns or operates a gas, electric light, electric power, or water works, or water and light plant used for local sale and distribution located within an incorporated city or town in this state.

(2) "Business" means the providing of gas, electric light, electric power, or water. (Title 122A, Art. 11.03, Sec. (1) (part).)

Sec. 182.022. Imposition and Rate of Tax

(a) A tax is imposed on each utility company located in an incorporated city or town having a population of more than 1,000, according to the last federal census next preceding the filing of the report.

(b) The tax rates are:

(1) .581 percent of the gross receipts from business done in an incorporated city or town having a population of more than 1,000 but less than 2,500, according to the last federal census next preceding the filing of the report;

(2) 1.07 percent of the gross receipts from business done in an incorporated city or town having a population of 2,500 or more but less than 10,000, according to the last federal census next preceding the filing of the report; and

(3) 1.997 percent of the gross receipts from business done in an incorporated city or town having a population of 10,000 or more, according to the last federal census next preceding the filing of the report. (Title 122A, Art. 11.03, Sec. (1) (part).)

Sec. 182.023. Payment of Tax

Only one utility company pays the tax on a commodity. If the commodity is produced by one utility company and distributed by another, the distributor pays the tax. (Title 122A, Art. 11.03, Sec. (2).)

Sec. 182.024. Political Subdivisions

No city or other political subdivision of this state may impose an occupation tax or charge of any sort on a utility company taxed under this subchapter. (Title 122A, Art. 11.03, Sec. (3) (part).)

Sec. 182.025. Charges by a City

(a) An incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business.

(b) The total charges, however designated or measured, may not exceed two percent of the gross receipts of the public utility for the sale of gas, electric energy, or water within the city.

(c) If a public utility taxed under this subchapter pays a special tax, rental, contribution, or charge under a contract or franchise executed before May 1, 1941, the city shall credit the payment against the amount owed by the public utility on any charge allowable under Subsection (a) of this section. (Title 122A, Art. 11.03, Sec. (3) (part).)

Sec. 182.026. Subchapter Not Applicable

(a) This subchapter does not apply to a utility company owned and operated by a city, town, county, water improvement district, or conservation district.

(b) This subchapter does not:

(1) affect collection of ad valorem taxes; or

(2) impair or alter a provision of a contract, agreement, or franchise made between a city and a public utility company relating to a payment made to the city. (Title 122A, Art. 11.03, Secs. (1) (part), (3) (part).)

[Sections 182.027–182.040 reserved for expansion]

SUBCHAPTER C. CAR COMPANIES

Sec. 182.041. Definitions

In this subchapter:

(1) "Car company" means a person who:

(A) owns a stock car, refrigerator or fruit car of any kind, tank car of any kind, coal car of any kind, furniture car, common box car, or flat car; and

(B) leases or charges mileage for the use of the car.

(2) "Business" means the leasing of or charging mileage for the use of the car. (Title 122A, Art. 11.04 (part).)

Sec. 182.042. Imposition and Rate of Tax

(a) A tax is imposed on each car company residing or incorporated outside this state on the gross receipts from business done in this state.

(b) The tax rate is three percent of the gross receipts. (Title 122A, Art. 11.04(part).)

[Sections 182.043–182.060 reserved for expansion]

SUBCHAPTER D. TELEPHONE COMPANIES

Sec. 182.061. Definitions

In this subchapter:

(1) "Telephone company" means a person who owns or operates a telephone line or a telephone in this state and charges for its use.

(2) "Business" means providing telephone service or leasing a telephone, telephone equipment, or telephone line. (Title 122A, Art. 11.06, Sec. (1) (part).)

Sec. 182.062. Imposition and Rate of Tax

(a) A tax is imposed on each telephone company on the gross receipts from business done in this state.

(b) The tax rates are:

(1) 1.65 percent of the gross receipts from business done outside an incorporated city or town or in an incorporated city or town having a population of 2,500 or less;

(2) 1.925 percent of the gross receipts from business done in an incorporated city or town having a population of more than 2,500 but not more than 10,000; and

(3) 2.5025 percent of the gross receipts from business done in an incorporated city or town having a population of more than 10,000. (Title 122A, Art. 11.06, Sec. (1) (part).)

Sec. 182.063. Political Subdivisions

No city or other political subdivision of this state may impose, on a telephone company taxed under Section 182.062 of this code, an occupation tax or any charge for the privilege of doing business. (Title 122A, Art. 11.06, Sec. (2) (part).)

Sec. 182.064. Subchapter Not Applicable

(a) This subchapter does not apply to a telephone company owned and operated by a cooperative, nonprofit, membership corporation.

(b) This subchapter does not:

(1) prohibit the collection by a city of a franchise tax in effect on October 31, 1936;

(2) prohibit the collection of ad valorem taxes; or

(3) affect any contracts made between a city and a franchise holder. (Title 122A, Art. 11.06, Secs. (1) (part), (2) (part).)

[Sections 182.065–182.080 reserved for expansion]

SUBCHAPTER E. TAX COLLECTIONS AND BUSINESS PERMITS

Sec. 182.081. Reports

(a) A person required to pay a tax under this chapter shall report to the comptroller on the first day of January, April, July, and October of each year.

(b) A report must include a statement of the gross receipts from business done, as defined in this chapter for each taxpayer, during the preceding quarterly period. (Title 122A, Art. 11.02, Sec. (1) (part); Art. 11.03, Sec. (1) (part); Art. 11.04 (part); Art. 11.06, Sec. (1) (part).)

Sec. 182.082. Tax Payments: Due Date

Except as provided by Section 182.083 of this code, the taxes imposed by this chapter are due and payable to the treasurer on the first day of January, April, July, and October of each year. (Title 122A, Art. 11.02, Sec. (1) (part); Art. 11.03, Sec. (1) (part); Art. 11.04 (part); Art. 11.-06, Sec. (1) (part).)

Sec. 182.083. Payment of Tax if Business Begun After Beginning of Quarter

If a person taxed under this chapter begins business on or after the first day of the quarter, then in lieu of the gross receipts tax provided for in this chapter, the tax for that quarter is $50, payable to the treasurer in advance. (Title 122A, Art. 11.07 (part).)

Sec. 182.084. Additional Reports

The comptroller may require a person required to report under this chapter to supply additional or supplemental reports containing information necessary to compute the tax due. (Title 122A, Art. 11.08 (part).)

Sec. 182.085. Forms

The comptroller shall prepare forms for use in making the reports required by this chapter. (Title 122A, Art. 11.08 (part).)

Sec. 182.086. Permit Required; Form of Permit

(a) Each person taxed under this chapter must have a permit to transact business.

(b) The comptroller shall issue the permit in a form prescribed by the attorney general.

(c) A permit shows:

(1) the name of the person to whom it is issued;

(2) the business to be transacted; and

(3) that the holder has complied with this chapter.

(d) The permit must be publicly displayed at the principal office of the person to whom it is issued. (R.C.S. Art. 7080.)

Sec. 182.087. Application and Issuance of Permit

(a) The comptroller shall prescribe the form of the application for the permit to transact business.

(b) The application must show:

(1) to the satisfaction of the comptroller the facts required under Section 182.086 of this code; and

(2) that the applicant has paid the taxes required by this chapter or, if the applicant is the buyer of a going business, that the seller has paid all taxes due or to become due under this chapter.

(c) After determining that all taxes due under this chapter have been paid, the comptroller shall issue the permit to transact business.

(d) The permit expires on December 31 following the date of issuance.

(e) No permit may be issued without the filing of an application for which a fee of $1 is required to defray the cost of issuing the permit. (R.C.S. Art. 7081.)

Sec. 182.088. Suspension of Permit

(a) If taxes due under this chapter are not paid before the expiration of 30 days after the due date, the comptroller shall mail a written notice to the delinquent taxpayer at the last known address stating that:

(1) the tax is unpaid; and

(2) the comptroller will suspend the permit to transact business if the tax is not paid within 10 days of the date of the notice.

(b) The mailing of the notice is sufficient compliance with this law.

(c) If the tax and accrued penalties are not paid before the expiration of 15 days after the mailing of the notice, the comptroller shall:

(1) Note on the records that the permit to transact business of the delinquent taxpayer has been suspended, giving the date of suspension;

(2) immediately certify the suspension to the attorney general; and

(3) have published a notice of suspension of the permit in a daily or weekly newspaper published in the county of the delinquent taxpayer's business or, if there is no newspaper published in that county, in a daily newspaper with statewide circulation. (R.C.S. Art. 7082 (part).)

[Sections 182.089–182.100 reserved for expansion]

SUBCHAPTER F. PENALTIES

Sec. 182.101. Failure to Report

A person who is required to report under this chapter and who fails to report before the expiration of 30 days after the due date forfeits and shall pay to the state a penalty of not more than $1,000. (Title 122A, Art. 11.10.)

Sec. 182.102. Penalty for Failure to Pay Tax

(a) If a person taxed under this chapter fails to pay the tax before the expiration of 30 days after the due date, the person forfeits and shall pay to the state a penalty of five percent of the amount of the tax. If the person then fails to pay after the first 30 days, the person must pay an additional penalty of five percent of the amount of the tax.

(b) The minimum penalty imposed by this section is $1. (Title 122A, Art. 11.11 (part).)

Sec. 182.103. Suits

(a) The attorney general shall bring suits to collect penalties under this chapter.

(b) The courts of Travis County have concurrent jurisdiction of a violation under this chapter. (Title 122A, Art. 11.09 (part); R.C.S. Art. 7083 (part).)

Sec. 182.104. Transacting Business Without a Permit: Penalty

(a) A person commits an offense if the person is required by Section 182.086 of this code to have a permit and the person transacts business without a valid permit.

(b) An offense under Subsection (a) of this section is punishable by a fine of not less than $50 nor more than $500. Each day on which a violation occurs is a separate offense. (Title 122A, Art. 11.09 (part); R. C.S. Arts. 7082 (part), 7083 (part).)

[Sections 182.105-182.120 reserved for expansion]

SUBCHAPTER G. NATURE AND ALLOCATION OF TAX

Sec. 182.121. Nature of Tax

A tax imposed by this chapter is an occupation tax. (Title 122A, Arts. 11.02 (part), 11.03 (part), 11.04 (part), 11.06 (part).)

Sec. 182.122. Allocation of Tax

Revenues collected under this chapter are allocated:

(1) one-fourth to the available school fund; and

(2) three-fourths to the omnibus tax clearance fund. (Title 122A, Art. 24.01 (part).)

SUBTITLE H. BUSINESS PERMIT TAXES

CHAPTER 191. MISCELLANEOUS OCCUPATION TAXES

SUBCHAPTER A. BROKERS AND FACTORS

Section
191.001. Definition
191.002. Imposition and Rate of Tax
191.003. Exemption

[Sections 191.004–191.020 reserved for expansion]

SUBCHAPTER B. PISTOL DEALERS

191.021. Definitions
191.022. Imposition and Rate of Tax
191.023. License
191.024. Records
191.025. Exception
191.026. County or City

[Sections 191.027–191.040 reserved for expansion]

SUBCHAPTER C. SHIP BROKERS

191.041. Definition
191.042. Imposition and Rate of Tax

[Sections 191.043–191.060 reserved for expansion]

SUBCHAPTER D. BILLIARD TABLE OWNERS OR OPERATORS

191.061. Definition
191.062 Imposition and Rate of Tax
191.063. City or Town
191.064. City or Town License

[Sections 191.065–191.080 reserved for expansion]

SUBCHAPTER E. OIL WELL SERVICE

191.081. Definition
191.082. Tax Imposed
191.083. Tax Rate
191.084. Report and Tax Payment
191.085. Record
191.086. Penalty
191.087. Failure to Pay Tax
191.088. State Tax Lien
191.089. Permit Required

[Sections 191.090–191.100 reserved for expansion]

SUBCHAPTER F. TAX RECEIPT

191.101. Tax Receipt as Permit
191.102. Display of Permit: Penalty

[Sections 191.103–191.120 reserved for expansion]

SUBCHAPTER G. NATURE AND ALLOCATION OF TAX

Section
191.121. Nature of Tax
191.122. Allocation of Tax

SUBTITLE H. BUSINESS PERMIT TAXES

CHAPTER 191. MISCELLANEOUS OCCUPATION TAXES

SUBCHAPTER A. BROKERS AND FACTORS

Sec. 191.001. Definition

(a) In this subchapter, "broker" or "factor" means a person who, for another person and for valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases, sales, or transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, money, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce, or any kind of merchandise.

(b) A person is not a broker or factor if the person:

(1) is a salesman who is employed on a salary or commission basis by only one retailer, wholesaler, jobber, or manufacturer;

(2) sells property only as a receiver, trustee in bankruptcy, executor, or administrator; or

(3) sells property under a court order. (Title 122A, Art. 19.01, Sec. (2) (part).)

Sec. 191.002. Imposition and Rate of Tax

(a) A tax is imposed on a person who, acting for the person or on behalf of another, engages in the business of a broker or factor.

(b) The tax rate is $12 per year to be paid in advance. (Title 122A, Art. 19.01, Sec. (2) (part).)

Sec. 191.003. Exemption

(a) The tax imposed by this subchapter does not apply to a person who is subject to a tax under Section 191.022, 191.042, 191.062, or 191.082 of this code.

(b) The exemption provided by Subsection (a) of this section does not apply to a person who engages in more than one occupation as described in this chapter. (Title 122A, Art. 19.01, Sec. (2) (part).)

[Sections 191.004–191.020 reserved for expansion]

SUBCHAPTER B. PISTOL DEALERS

Sec. 191.021. Definitions

In this subchapter:

(1) "Pistol dealer" means a person who barters, leases, sells, exchanges, or deals in pistols for profit either at retail or wholesale.

(2) "Pistol" means a revolver, automatic, semiautomatic, magazine pistol, or other short firearm intended or designed to be aimed or fired from one hand. (Title 122A, Art. 19.01, Sec. (7) (part).)

Sec. 191.022. Imposition and Rate of Tax

(a) A tax is imposed on each pistol dealer.

(b) The tax rate is $10 per year.

(c) A pistol dealer shall pay the tax on or before January 1 of each year. The dealer shall pay the tax before beginning or continuing business. (Title 122A, Art. 19.01, Sec. (7) (part).)

Sec. 191.023. License

(a) A person may not engage in business as a pistol dealer unless the person has applied for and received a license as a pistol dealer.

(b) A person shall obtain a license as a pistol dealer for each place of business.

(c) The tax collector of the county in which a business is located shall issue the license.

(d) The comptroller shall furnish license application forms to the county tax collector. (Title 122A, Art. 19.01, Sec. (7) (part).)

Sec. 191.024. Records

(a) A pistol dealer shall keep a record of the sale, barter, exchange, lease, or disposition of each pistol.

(b) The pistol dealer shall keep the record available during normal business hours for 10 years for inspection by any authorized law enforcement agency of a city or county or of the state.

(c) The record must show:

(1) the number of the pistol;

(2) the name of the manufacturer;

(3) the date of the transaction; and

(4) the names and addresses of the salesman and the purchaser.

(Title 122A, Art. 19.01, Sec. (7)(b).)

Sec. 191.025. Exception

A person is not required to pay the tax or obtain a license as required by this subchapter if the person sells pistols exclusively to the United States military or to agencies of the federal government that are authorized by law to purchase pistols. (Title 122A, Art. 19.01, Sec. (7)(d).)

Sec. 191.026. County or City

(a) A county or an incorporated city or town may impose an occupation tax on pistol dealers.

(b) The tax rate may not be greater than one-half of the rate of the tax imposed by the state. (Title 122A, Art. 19.01, Sec. (7)(a).)

[Sections 191.027–191.040 reserved for expansion]

SUBCHAPTER C. SHIP BROKERS

Sec. 191.041. Definition

In this subchapter, "ship broker" means a person who manages business matters between owners of vessels and the shippers or consignors of the freight carried on the vessel. (Title 122A, Art. 19.01, Sec. (9) (part).)

Sec. 191.042. Imposition and Rate of Tax

(a) A tax is imposed on each ship broker.

(b) The tax rate is $25 per year to be paid in advance. (Title 122A, Art. 19.01, Sec. (9) (part).)

[Sections 191.043–191.060 reserved for expansion]

SUBCHAPTER D. BILLIARD TABLE OWNERS OR OPERATORS

Sec. 191.061. Definition

In this subchapter, "billiard table" means a table surrounded by a ledge or cushion with or without pockets on which balls are impelled by

a stick or cue, but does not include a coin-operated billiard table. (Title 122A, Art. 19.01, Sec. (10)(b).)

Sec. 191.062. Imposition and Rate of Tax

(a) A tax is imposed on each person who owns and operates billiard tables for profit.

(b) The tax imposed by this section does not apply to religious, charitable, or educational organizations authorized by law in this state.

(c) The tax rate is $5 per year for each billiard table. The tax is to be paid in advance. (Title 122A, Art. 19.01, Sec. (10)(a).)

Sec. 191.063. City or Town

(a) An incorporated city or town may impose an occupation tax on each person who owns and operates billiard tables for profit.

(b) The tax rate may not be greater than one-half of the rate of the tax imposed by the state. (Title 122A, Art. 19.01, Sec. (10)(c) (part).)

Sec. 191.064. City or Town License

(a) An incorporated city or town may prohibit or regulate the operation of billiard tables within the incorporated limits.

(b) This section does not apply to a religious, charitable, or educational organization authorized by the state that operates billiard tables.

(c) If a city or town charges a fee for a license to operate a billiard table, the fee may not be more than $10 per year per table.

(d) The city or town may set penalties for violation of the prohibition or regulation. (Title 122A, Art. 19.01, Sec. (10)(c) (part).)

[Sections 191.065–191.080 reserved for expansion]

SUBCHAPTER E. OIL WELL SERVICE

Sec. 191.081. Definition

In this subchapter, "oil well service" means cementing the casing seat of an oil or gas well, shooting, fracturing, or acidizing the sands or other formations of the earth in an oil or gas well, or surveying or testing the sands or other formations or their contents in an oil or gas well by using instruments or equipment at least a part of which are located in the well bore when the survey or test is made. (Title 122A, Art. 19.02, Sec. (2) (part).)

Sec. 191.082. Tax Imposed

(a) A tax is imposed on each person who engages in the business of providing any oil well service for another for consideration and who:

(1) owns, controls, or furnishes the tools, instruments, and equipment used in providing the oil well service; or

(2) uses any chemical, electrical, or mechanical process in providing the service at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning, of the well.

(b) The tax imposed by this subchapter does not apply to the business of drilling or reworking an oil or gas well or to a service incidental to that business performed by persons engaged in the business of drilling or reworking. (Title 122A, Art. 19.02, Sec. (2) (part).)

Sec. 191.083. Tax Rate

The rate of the tax imposed by this subchapter is 2.42 percent of the gross amount received for service after deduction for the reasonable value at the well of material used, consumed, or expended in or incorporated into the well. (Title 122A, Art. 19.02, Sec. (3) (part).)

Sec. 191.084. Report and Tax Payment

(a) A person subject to the tax shall report the amount received from taxable services during the preceding calendar month.

(b) The comptroller shall prescribe and furnish the form for the report.

(c) The person subject to the tax shall pay the tax to the comptroller at the comptroller's office in Austin on or before the 20th day of each month. (Title 122A, Art. 19.02, Sec. (3) (part).)

Sec. 191.085. Record

(a) A person subject to the tax shall keep a complete record of business transacted and any other information the comptroller requires.

(b) The person shall keep the record open for two years for inspection by the comptroller or the attorney general. (Title 122A, Art. 19.02, Sec. (4).)

Sec. 191.086. Penalty

A person who violates this subchapter forfeits and shall pay to the state a penalty of not less than $25 nor more than $500. A separate offense is committed each day on which a violation occurs. (Title 122A, Art. 19.02, Sec. (5) (part).)

Sec. 191.087. Failure to Pay Tax

(a) If a person taxed under this subchapter fails to pay the tax on or before the due date, the person forfeits and shall pay to the state a penalty of five percent of the amount of the tax. If the person then fails to pay after the first 30 days, the person forfeits an additional penalty of five percent of the amount of the tax.

(b) The minimum penalty imposed by this section is $1. (Title 122A, Art. 19.02, Sec. (5) (part).)

Sec. 191.088. State Tax Lien

The taxes, penalties, interests, and costs that a person owes the state under this subchapter are secured by a preferred lien, first and prior to other existing liens, contract or statutory, legal or equitable, on all property of the person used in the person's business. (Title 122A, Art. 19.02, Sec. (5) (part).)

Sec. 191.089. Permit Required

A person subject to the tax imposed by this subchapter shall acquire the permit required by Section 182.086 of this code. Application, issuance, and suspension of the permit are subject to Sections 182.087 and 182.088 of this code. (R.C.S. Arts. 7080, 7081, 7082 (part).)

[Sections 191.090–191.100 reserved for expansion]

SUBCHAPTER F. TAX RECEIPT

Sec. 191.101. Tax Receipt as Permit

(a) The receipt from the treasurer for tax payment is the permit to do business unless a separate permit is required by law.

(b) A person may not receive a permit to do or continue to do business in this state until the person pays the tax imposed by this chapter. (Title 122A, Art. 19.04.)

Sec. 191.102. Display of Permit; Penalty

(a) A person commits an offense if the person, without displaying the receipt for the tax imposed by this chapter:

(1) engages in a business taxed under this chapter; or

(2) exhibits a machine or instrument taxed under this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $50. (Title 122A, Art. 19.03.)

[Sections 191.103-191.120 reserved for expansion]

SUBCHAPTER G. NATURE AND ALLOCATION OF TAX

Sec. 191.121. Nature of Tax

A tax imposed by this chapter is an occupation tax. (Title 122A, Arts. 19.01 (part), 19.02 (part).)

Sec. 191.122. Allocation of Tax

One-fourth of the revenue collected under this chapter shall be deposited to the credit of the available school fund and three-fourths to the credit of the tax clearance fund. (Title 122A, Art. 24.01 (part).)

CHAPTER 192. QUOTATION SERVICES

Section

192.001. Definition
192.002. Imposition and Rate of Tax
192.003. Exemption
192.004. Medium of Payment
192.005. Tax Receipt
192.006. Tax Receipt Required
192.007. Account of Receipts
192.008. State Tax Lien
192.009. City or Town
192.010. County

CHAPTER 192. QUOTATION SERVICES

Sec. 192.001. Definition

In this subchapter, "quotation service" means a person who:

(1) owns, operates, manages, controls, or engages in the business of a cotton exchange quotation service in this state or furnishes quotations on the stock market on grain; and

(2) maintains an office or place of business and has a means of furnishing quotations on the stock market. (V.A.C.S. Art. 7047a (part).)

Sec. 192.002. Imposition and Rate of Tax

(a) A tax is imposed on each quotation service for each office or place of business.

(b) The tax rate is $250 per year unless the quotation service is a member of only one commodity exchange, in which case the rate is $100 per year.

(c) A quotation service shall pay the tax annually in advance. (V.A.C.S. Arts. 7047a (part), 7052 (part).)

Sec. 192.003. Exemption

The tax imposed by this subchapter does not apply to a person who:

(1) gratuitously furnishes market quotations to any person who requests them;

(2) furnishes market quotations without an intent to solicit or accept orders for contracts or contracts for future deliveries or sales of any commodity, stock, or bond; and

(3) is not engaged in the business of furnishing market quotations. (V.A.C.S. Art. 7047a (part).)

Sec. 192.004. Medium of Payment

Taxes imposed by Section 192.002 of this code are payable in United States currency. (V.A.C.S. Art. 7049 (part).)

Sec. 192.005. Tax Receipt

(a) The comptroller shall have annual occupation tax receipts payable to the collectors printed with the comptroller's signature. The comptroller shall send each collector a proper number of receipts and charge the collector with the amount represented. The collector shall account for the receipts.

(b) Each receipt must state the name of the occupation and the amount of the tax.

(c) Each receipt must have blank spaces for:

(1) the month;

(2) the year;

(3) the name of the quotation service; and

(4) the collector's signature.

(d) Each receipt must have a stub attached that shows the information required by Subsection (c) of this section. The tax receipts must be bound in books.

(e) The collector shall fill in the blanks and officially sign the receipt and stub. (V.A.C.S. Art. 7053 (part).)

Sec. 192.006. Tax Receipt Required

(a) A person may not engage in the business of a quotation service unless the person has a receipt as provided by Section 192.005 of this code.

(b) A quotation service shall keep the receipt posted in a conspicuous place in each place of business. (V.A.C.S. Art. 7053 (part).)

Sec. 192.007. Account of Receipts

(a) The comptroller shall furnish the commissioners court of the collector's county the number and value of the receipts when the comptroller furnishes receipts to the collector and shall send the number and value of receipts returned and the amount of tax collected by the collector.

(b) When a collector makes a settlement with the comptroller, the collector shall account to the commissioners court for the amount of tax due the county under Section 192.010 of this code. (V.A.C.S. Art. 7054.)

Sec. 192.008. State Tax Lien

(a) The tax that a quotation service owes this state is a lien on the stock and fixtures owned or used in the business.

(b) After notice, the collector may sell the property to pay the tax and the costs of the sale. (V.A.C.S. Art. 7052 (part).)

Sec. 192.009. City or Town

(a) An incorporated city or town may impose an occupation tax on an occupation taxed under this chapter.

(b) The tax rate may not exceed one-half of the rate of the tax imposed by the state. (V.A.C.S. Arts. 7048 (part), 7047a (part).)

Sec. 192.010. County

(a) A county may impose an occupation tax on an occupation taxed under this chapter.

(b) The tax rate may not exceed one-half of the rate of the tax imposed by the state.

(c) A person subject to a county occupation tax shall pay the tax quarterly. The receipt under seal of the proper officer is prima facie evidence of tax payment.

(d) This section does not affect a law authorizing a county to impose a different tax rate. (V.A.C.S. Arts. 7048 (part), 7047a (part).)

SUBTITLE I. SEVERANCE TAXES

CHAPTER 201. GAS PRODUCTION TAX

SUBCHAPTER A. GENERAL PROVISIONS

Section
201.001. Definitions
201.002. Measurement of Volume of Gas

[Sections 201.003–201.050 reserved for expansion]

SUBCHAPTER B. TAX IMPOSED

201.051. Tax Imposed
201.052. Rate of Tax
201.053. Gas Not Taxed
201.054. Tax on Liquid Hydrocarbons
201.055. Tax on Condensate

[Sections 201.056–201.100 reserved for expansion]

SUBCHAPTER C. DETERMINING VALUE

201.101. Market Value
201.102. Cash Sales
201.103. Value if Consideration Includes Extracts
201.104. Returned Cycle Gas
201.105. Value of Liquid Hydrocarbons Other Than Condensate
201.106. Value of Condensate

[Sections 201.107–201.150 reserved for expansion]

SUBCHAPTER D. RECORDS

201.151. Producer's Records
201.152. Purchaser's Records

[Sections 201.153–201.200 reserved for expansion]

SUBCHAPTER E. REPORTS AND PAYMENTS

201.201. Tax Due
201.202. Payment of Tax
201.203. Producer's Report
201.204. First Purchaser to Pay Tax
201.205. Tax Borne Ratably
201.206. Transfer of Ownership

[Sections 201.207–201.250 reserved for expansion]

SUBCHAPTER F. LIABILITY FOR TAX

Section
201.251. Liability of Producer and Purchaser
201.252. Producer's Remedy

[Sections 201.253–201.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

201.301. Investigations
201.302. Audits
201.303. Tax Lien
201.304. Suit for Taxes; Sworn Denial

[Sections 201.305–201.350 reserved for expansion]

SUBCHAPTER H. PENALTIES

201.351. Delinquent Tax; Penalty
201.352. Unlawful Removal of Gas
201.353. Incomplete Records or Reports; Concealing Property Under Lien; Penalty
201.354. Collection of Civil Penalty
201.355. General Penalty

[Sections 201.356–201.400 reserved for expansion]

SUBCHAPTER I. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

201.401. Occupation Tax
201.402. Penalty Collected for Audits or Investigations
201.403. Tax Set Aside
201.404. Allocation of Revenue

SUBTITLE I. SEVERANCE TAXES

CHAPTER 201. GAS PRODUCTION TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. Definitions

In this chapter:

(1) "Casinghead gas" means gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) "Condensate" means liquid hydrocarbon that is or can be recovered from gas by a separator, but does not include liquid hydrocarbon recovered from gas by refrigeration or absorption and separated by a fractionating process.

(3) "First purchaser" means a person who purchases gas from a producer.

(4) "Gas" means natural gas, casinghead gas, or other gas taken from the earth or water, whether produced from a gas well or a well also producing oil, distillate or condensate or both, or other products.

(5) "Producer" means a person who takes gas from the earth or water, a person who owns, controls, manages, or leases a gas well, or

a person who owns an interest, including a royalty interest, in gas or its value, whether the gas is produced by the person owning the interest or by another on his behalf by lease, contract, or other arrangement.

(6) "Production" or "gas produced" means the gross amount of gas taken from the earth or water as determined by meter readings that show 100 percent of the gas taken expressed in cubic feet.

(7) "Royalty interest" means an interest in mineral rights in a producing leasehold in the state, but does not include the interest of the person having the management and operation of a well.

(8) "Sour gas" means gas with more than 1½ grains of hydrogen sulfide per 100 cubic feet or more than 30 grains of sulphur per 100 cubic feet.

(9) "Subsequent purchaser" means a person who purchases gas from a person other than the producer of the gas.

(10) "Sweet gas" means gas other than sour gas or casinghead gas. (Title 122A, Art. 3.02(2) (part); Arts. 3.04(1), (2), (3), (5), (6), (7), (8), (11), (13).)

Sec. 201.002. Measurement of Volume of Gas

The provisions of Section 91.052 of the Standard Gas Measurement Law, Subchapter C, Chapter 91, Natural Resources Code, apply to this code. (Title 122A, Art. 3.02 (12).)

[Sections 201.003–201.050 reserved for expansion]

SUBCHAPTER B. TAX IMPOSED

Sec. 201.051. Tax Imposed

There is imposed a tax on each producer of gas. (Title 122A, Art. 3.-01(1) (part).)

Sec. 201.052. Rate of Tax

(a) The tax imposed by this chapter is at the rate of 7.5 percent of the market value of gas produced and saved in this state by the producer.

(b) The minimum tax rate on sweet and sour gas produced and saved in this state is 121/1,500 of one cent for each 1,000 cubic feet. (Title 122A, Art. 3.01(1) (part).)

Sec. 201.053. Gas Not Taxed

The tax imposed by this chapter does not apply to gas:

(1) injected into the earth in this state, unless sold for that purpose;

(2) produced from oil wells with oil and lawfully vented or flared; or

(3) used for lifting oil, unless sold for that purpose. (Title 122A, Art. 3.01(2).)

Sec. 201.054. Tax on Liquid Hydrocarbons

(a) There is imposed on each producer a tax on the market value of liquid hydrocarbons, other than condensate, recovered from gas produced in the state by a producer.

(b) The rate of the tax imposed by this section is the same as the rate of the tax imposed by Section 201.052 of this code. (Title 122A, Art. 3.-02(2) (part).)

Sec. 201.055. Tax on Condensate

(a) There is imposed on each producer a tax measured by the amount of condensate recovered from gas produced in this state by a producer.

(b) The tax imposed by this section is at the same rate as the rate of the tax imposed on oil by Section 202.052 of this code. (Title 122A, Art. 3.02(2) (part).)

[Sections 201.056–201.100 reserved for expansion]

SUBCHAPTER C. DETERMINING VALUE

Sec. 201.101. Market Value

The market value of gas is its value at the mouth of the well from which it is produced. (Title 122A, Art. 3.02(1) (part).)

Sec. 201.102. Cash Sales

If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts. (Title 122A, Art. 3.02(1) (part).)

Sec. 201.103. Value if Consideration Includes Extracts

If the consideration for the sale of gas includes products extracted from the gas, 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 a bonus or premium. (Title 122A, Art. 3.02(1) (part).)

Sec. 201.104. Returned Cyle Gas

(a) If gas is processed for its liquid hydrocarbon content and the residue gas is returned to a gas-producing formation by cycling methods, as distinguished from repressuring or pressure maintenance methods, the taxable value of the gas is three-fifths the value of all liquid hydrocarbons extracted, separated, and saved from the gas.

(b) The value of the liquid hydrocarbons for the purpose of this section is the highest posted price of crude oil in the field where the gas is produced. If no oil is produced in that field, the value is the highest posted price for crude oil in the nearest oil field.

(c) The value of the liquid hydrocarbons is determined when they are extracted and separated from gas and before they are absorbed, refined, or processed. The quantity of the liquid hydrocarbons is the yield from the gas at the processing plant.

(d) The valuation method prescribed by this section controls over the valuation methods described in Sections 201.102 and 201.103 of this code only in circumstances in which Subsection (a) of this section applies. (Title 122A, Art. 3.02(1) (part).)

Sec. 201.105. Value of Liquid Hydrocarbons Other Than Condensate

The taxable value of liquid hydrocarbons other than condensate is the producer's total gross receipts for all liquid hydrocarbons, including condensate, recovered from gas produced by him less the taxable value of the condensate recovered from that gas. (Title 122A, Art. 3.02(2) (part).)

Sec. 201.106. Value of Condensate

The value of condensate for the purpose of computing the tax due on it is the prevailing price for condensate in the general area where it is recovered. (Title 122A, Art. 3.02(2) (part).)

[Sections 201.107–201.150 reserved for expansion]

SUBCHAPTER D. RECORDS

Sec. 201.151. Producer's Records

A producer shall keep accurate records of all gas the producer produces. The records shall be kept in the state. (Title 122A, Art. 3.03(1) (part).)

Sec. 201.152. Purchaser's Records

A purchaser shall keep accurate records of all gas the purchaser purchases. The records shall be kept in the state. (Title 122A, Art. 3.03(2) (part).)

[Sections 201.153–201.200 reserved for expansion]

SUBCHAPTER E. REPORTS AND PAYMENTS

Sec. 201.201. Tax Due

The tax imposed by this chapter is due at the office of the comptroller in Austin on the last day of each calendar month for gas produced and saved during the preceding calendar month. (Title 122A, Arts. 3.03(2) (part), (3) (part).)

Sec. 201.202. Payment of Tax

The tax imposed by this chapter must be paid by legal tender or cashier's check payable to the state treasurer. (Title 122A, Arts. 3.03(2) (part), (3) (part).)

Sec. 201.203. Producer's Report

(a) On or before the last day of each calendar month, each producer shall file a report with the comptroller on forms prescribed by the comptroller. The report must contain the following information concerning gas produced during the preceding calendar month:

(1) the gross amount of gas produced that is subject to the tax imposed by this chapter;

(2) the leases from which the gas was produced;

(3) the names and addresses of the first purchasers of the gas; and

(4) other information the comptroller may reasonably require.

(b) If the producer is required to pay a tax on gas reported under this section, the producer shall pay the tax when he files the report. (Title 122A, Arts. 3.03(1) (part), (3) (part).)

Sec. 201.204. First Purchaser to Pay Tax

(a) A first purchaser shall pay the tax imposed by this chapter on gas that the first purchaser purchases from a producer and takes delivery on the premises where the gas is produced.

(b) A first purchaser shall withhold from payments to the producer the amount of the tax that the first purchaser is required to pay. This subsection does not affect a lease or contract between the state or a political subdivision of the state and a producer.

(c) Money withheld by a first purchaser under this section is held in trust for the use and benefit of the state and may not be commingled with other funds of the first purchaser. (Title 122A, Art. 3.03(2) (part); Arts. 3.05(1) (part), (4) (part).)

Sec. 201.205. Tax Borne Ratably

The tax shall be borne ratably by all interested parties, including royalty interests. Producers or purchasers of gas, or both, are authorized

and required to withhold from any payment due interested parties the proportionate tax due and remit it to the comptroller. (Title 122A, Art. 3.03(5).)

Sec. 201.206. Transfer of Ownership

(a) If a gas-producing lease is transferred or is to be transferred, the producer transferring the lease shall note the name and address of the producer acquiring the lease and the date of the transfer on the last report that covers the lease and that he is required by Section 201.203 of this code to file.

(b) If a gas-producing lease is transferred, the producer acquiring the lease shall note the date of the transfer and the name and address of the person from whom the lease was acquired on the first report that covers the lease and that he is required by Section 201.203 of this code to file. (Title 122A, Art. 3.10(2).)

[Sections 201.207–201.250 reserved for expansion]

SUBCHAPTER F. LIABILITY FOR TAX

Sec. 201.251. Liability of Producer and Purchaser

The tax imposed by this chapter is the primary liability of the producer and is a liability of the first purchaser and each subsequent purchaser. Failure of the first purchaser to pay the tax does not relieve the producer or a subsequent purchaser from liability for the tax. A purchaser of gas produced in the state shall satisfy himself that the tax on that gas has been or will be paid by the person liable for the tax. (Title 122A, Arts. 3.03(1) (part), (3) (part); Arts. 3.05(1) (part), (3), (4) (part).)

Sec. 201.252. Producer's Remedy

If a purchaser withholds the amount of the tax imposed by this chapter from payments to a producer for the sale of gas and fails to pay the tax as provided by this chapter, the producer may sue the purchaser to recover the amount of the tax withheld, penalties and interest that have accrued from failure to pay the tax, court costs, and reasonable attorney's fees. (Title 122A, Art. 3.03(3) (part).)

[Sections 201.253–201.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

Sec. 201.301. Investigations

The comptroller may enter the premises of a taxpayer liable for a tax imposed by this chapter or any other premises necessary to determine tax liability in order to examine books or records of a person subject to a tax imposed by this chapter or to secure any information related to the enforcement of this chapter. (Title 122A, Art. 3.06 (part).)

Sec. 201.302. Audits

(a) The comptroller shall employ auditors and other technical assistants to verify reports and investigate the affairs of producers and purchasers to determine whether the tax is properly reported and paid.

(b) A producer who has failed to pay the proper amount of tax, a penalty, or interest due is liable for the reasonable expenses incurred by representatives of the comptroller in the investigation or the reasonable value of their services. The amount for which the producer is liable under this subsection is an additional penalty. (Title 122A, Arts. 3.06(1) (part), 3.08 (part).)

Sec. 201.303. Tax Lien

(a) If a tax imposed by this chapter is delinquent or if interest or a penalty on a delinquent tax has not been paid, the state has a prior lien for the tax, penalty, and interest on all property and equipment used by the producer to produce gas.

(b) The lien may be enforced by a suit filed by the attorney general Venue of the suit is in Travis County. (Title 122A, Art. 3.08 (part).)

Sec. 201.304. Suit for Taxes; Sworn Denial

Rule 185, Texas Rules of Civil Procedure, applies to a suit by the attorney general for taxes imposed by this chapter if:

(1) the attorney general files as an exhibit a report or audit of the taxpayer; and

(2) the exhibit is supported by the comptroller's affidavit that the taxes shown to be due are past due and unpaid and that all payments and credits have been allowed. (Title 122A, Art. 3.09(2).)

[Sections 201.305–201.350 reserved for expansion]

SUBCHAPTER H. PENALTIES

Sec. 201.351. Delinquent Tax; Penalty

(a) If a tax imposed by this chapter is not paid on or before the day it is due, it becomes delinquent, and a penalty of five percent of the amount of the tax due is added to the amount due.

(b) If a tax imposed by this chapter is not paid within 30 days after the day on which the tax is due, an additional penalty of five percent of the amount of the tax due shall be added. The minimum penalty is $1. (Title 122A, Art. 3.03(4) (part).)

Sec. 201.352. Unlawful Removal of Gas

On notice from the comptroller, no person may produce or remove natural or casinghead gas from a lease in this state if the owner or operator of the lease has failed to file a report as required by this chapter. (Title 122A, Art. 3.10(1).)

Sec. 201.353. Incomplete Records or Reports; Concealing Property Under Lien; Penalty

(a) A person commits an offense if the person:

(1) with intent to defraud the state, knowingly fails to keep a complete record that the person is required by this chapter to keep;

(2) knowingly fails to file a complete report on or before the day the person is required by this chapter to file the report; or

(3) with intent to defraud the state, conceals property or equipment that is under a lien authorized by Section 201.303 of this code.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $100 nor more than $1,000;

(2) confinement in county jail for not more than 12 months; or

(3) both a fine and confinement.

(c) In addition to the criminal penalty, a person is liable for a civil penalty of $1,000 if the person:

(1) performs any act constituting an offense under Subsection (a) of this section;

(2) with intent to defraud the state, makes a false entry in any record the person is required by this chapter to keep;

(3) destroys, damages, or conceals a record the person is required by this chapter to keep;

(4) falsifies a report the person is required by this chapter to file; or

(5) violates any rule promulgated under this section. (Title 122A, Arts. 3.08 (part), 3.12 (part).)

Sec. 201.354. Collection of Civil Penalty

(a) The attorney general shall bring a suit for the collection of a penalty imposed by Section 201.353(c) of this code.

(b) Venue of a suit under this section is in the county where the violation occurs.

(c) A suit under this section may be joined with any other civil suit provided for by this chapter. (Title 122A, Art. 3.12 (part).)

Sec. 201.355. General Penalty

(a) A person commits an offense if the person violates or fails to comply with any provision of this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000. A separate offense is commited each day that a violation of a provision of this chapter continues. (Title 122A, Art. 3.08 (part).)

[Sections 201.356–201.400 reserved for expansion]

SUBCHAPTER I. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

Sec. 201.401. Occupation Tax

The tax imposed by this chapter is an occupation tax. (Title 122A, Art. 3.01(1) (part).)

Sec. 201.402. Penalty Collected for Audits or Investigations

A penalty collected for the expense or value of audits or investigations authorized by Section 201.302 of this code shall be deposited in the general revenue fund. (Title 122A, Art. 3.08 (part).)

Sec. 201.403. Tax Set Aside

One-half of one percent of the tax collected under this chapter shall be set aside in the state treasury for the use of the comptroller to administer and enforce the provisions of this chapter, subject to appropriation by the legislature. Money set aside by this section that is not spent at the end of a fiscal year reverts proportionally to the other funds to which the taxes imposed by this chapter are paid. (Title 122A, Art. 3.06 (part).)

Sec. 201.404. Allocation of Revenue

After deducting the amount required to be deposited by Section 201.-403 of this code, the comptroller shall deposit one-fourth of the revenue collected from the tax imposed by this chapter to the credit of the available school fund and three-fourths to the omnibus tax clearance fund. (Title 122A, Art. 24.01 (part).)

CHAPTER 202. OIL PRODUCTION TAX

SUBCHAPTER A. GENERAL PROVISIONS

Section
202.001. Definitions
202.002. Production and Measurement of Oil
202.003. Agreement to Pay Tax Not Impaired
202.004. Inspection of Records and Reports
202.005. Employment of Auditors

[Sections 202.006–202.050 reserved for expansion]

SUBCHAPTER B. TAX IMPOSED

202.051. Tax Imposed
202.052. Rate of Tax
202.053. Market Value

[Sections 202.054–202.100 reserved for expansion]

SUBCHAPTER C. RECORDS

202.101. Producer's Records
202.102. First Purchaser's Records
202.103. Subsequent Purchaser's Records
202.104. Royalty Owner's Records
202.105. Carrier's Records

[Sections 202.106–202.150 reserved for expansion]

SUBCHAPTER D. PAYMENTS

202.151. Tax Due
202.152. Payment of Tax
202.153. First Purchaser to Pay Tax
202.154. Producer to Pay Tax on Oil Not Sold
202.155. Purchaser to Pay Tax on Oil From Property Under Legal Constraint
202.156. Tax Borne Ratably

[Sections 202.157–202.200 reserved for expansion]

SUBCHAPTER E. REPORTS

202.201. Producer's Report
202.202. First Purchaser's Report
202.203. Subsequent Purchaser's Report
202.204. Reports of Carrier
202.205. Transfer of Ownership

[Sections 202.206–202.250 reserved for expansion]

SUBCHAPTER F. LIABILITY FOR TAX

202.251. Liability of Producer and Purchaser
202.252. Producer's Remedy

[Sections 202.253–202.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT AND PENALTIES

Section
202.301. Delinquent Taxes: Penalty
202.302. Tax Lien
202.303. Forced Sale by Officer
202.304. Suit for Taxes; Sworn Denial
202.305. Unlawful Removal of Oil
202.306. Inspector Has Free Access
202.307. Incomplete Records or Reports; Concealing Property Under Lien; Penalty

[Sections 202.308–202.350 reserved for expansion]

SUBCHAPTER H. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

202.351. Occupation Tax
202.352. Tax Set Aside
202.353. Allocation of Revenue

CHAPTER 202. OIL PRODUCTION TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 202.001. Definitions

In this chapter:

(1) "Carrier" means a person who owns, operates, or manages a means of transporting oil.

(2) "First purchaser" means a person who purchases crude oil from a producer.

(3) "Oil" means crude oil or other oil taken from the earth, regardless of the gravity of the oil.

(4) "Producer" means a person who takes oil from the earth or water in any manner, a person who owns, controls, manages, or leases an oil well, or a person who owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on his behalf by lease, contract, or any other arrangement.

(5) "Royalty interest" means an interest in mineral rights in a producing leasehold in the state, but does not include the interest of a person having the management and operation of a well.

(6) "Subsequent purchaser" means a person who purchases oil from a person other than the producer of the oil, or a person operating a reclamation plant, topping plant, treating plant, refinery, or processing plant. (Title 122A, Arts. 4.01(1), (2), (3), (4), (5), (6), (7), (9), (10), (11).)

Sec. 202.002. Production and Measurement of Oil

(a) "Production" means the total gross amount of oil produced, including royalty and other interests.

(b) The amount of production shall be measured or determined by:

(1) tank tables compiled to show 100 percent of the capacity of the tanks without deduction for overage or losses in handling; or

(2) meter or other measuring devices that accurately determine the amount of production.

(c) If the amount of production has been measured or determined by a tank table compiled to show less than 100 percent of the full capacity of a tank, the amount must be raised to a basis of 100 percent.

(d) When measuring or determining the amount of production, a reasonable deduction may be made for basic sediment and water and a reasonable allowance may be made for correction of the temperature to 60 degrees Fahrenheit.

(e) This section does not authorize the use of metering devices for the measurement of oil on a well without the express permission of the operator of the well. (Title 122A, Arts. 4.01(8), 4.02 (part); Acts 58th Legis., Reg.Sess., Ch. 441, Sec. 3.)

Sec. 202.003. Agreement to Pay Tax Not Impaired

This code does not impair a contract in which any person has agreed to pay any part of the tax imposed by this chapter. This code does not relieve any person of any contractual liability. (Title 122A, Art. 4.04(7) (part).)

Sec. 202.004. Inspection of Records and Reports

A person required by this chapter to make and keep a record shall keep the record open for inspection by the comptroller or the attorney general at all times. Reports filed under this chapter are open to inspection by the attorney general. (Title 122A, Arts. 4.04(2) (part), (3) (part), (5) (part), (6) (part), (7) (part).)

Sec. 202.005. Employment of Auditors

The comptroller may employ auditors and supervisors to verify reports and investigate the affairs of producers and purchasers to determine whether the tax imposed by this chapter is being properly reported and paid. (Title 122A, Art. 4.11 (part).)

[Sections 202.006–202.050 reserved for expansion]

SUBCHAPTER B. TAX IMPOSED

Sec. 202.051. Tax Imposed

There is imposed a tax on the production of oil. (Title 122A, Art. 4.02 (part).)

Sec. 202.052. Rate of Tax

The tax imposed by this chapter is at the rate of 4.6 percent of the market value of oil produced in this state or 4.6 cents for each barrel of 42 standard gallons of oil produced in this state, whichever rate results in the greater amount of tax. (Title 122A, Art. 4.02(part).)

Sec. 202.053. Market Value

The market value of oil is the actual market value plus any bonus, premium, or other thing of value paid for the oil or that the oil will reasonably bring if lawfully produced. (Title 122A, Art. 4.02 (part).)

[Sections 202.054–202.100 reserved for expansion]

SUBCHAPTER C. RECORDS

Sec. 202.101. Producer's Records

A producer shall keep accurate records in the state. The records must show:

(1) the counties in which the producer produces oil;

(2) the names of the leases from which the producer produces oil;

(3) the total number of barrels of oil produced from each lease;

(4) for each sale or delivery to a first purchaser, the name and address of the first purchaser, the number of barrels sold or delivered, and the price received for the oil;

(5) the amount and disposition of oil refined, processed, or used on the lease where it is produced;

(6) the location and number of barrels in storage that the producer owns and has not sold; and

(7) the name and address of each pipeline or refinery that is storing oil that the producer has not sold. (Title 122A, Arts. 4.03(7) (part), 4.04(1).)

Sec. 202.102. First Purchaser's Records

A first purchaser shall keep accurate records in the state. The records must show:

(1) the name and address of each producer from which the first purchaser buys oil;

(2) for each producer, the counties where the oil is produced;

(3) for each producer, the name of the lease from which the oil is produced;

(4) the number of barrels of oil purchased from each producer and the price paid each producer for the oil;

(5) the number of barrels purchased and used, refined, or processed by the first purchaser; and

(6) for each sale to a subsequent purchaser, the name and address of the subsequent purchaser, the number of barrels sold, and the price received for the oil. (Title 122A, Art. 4.04(3) (part).)

Sec. 202.103. Subsequent Purchaser's Records

A subsequent purchaser shall keep accurate records in the state. The records must show:

(1) the name and address of each person who sells oil to the subsequent purchaser, the number of barrels sold, the price paid to each seller, and the date of each sale;

(2) the disposition of all oil purchased by the subsequent purchaser;

(3) the number of barrels of oil used, refined, or processed by the subsequent purchaser; and

(4) the name and address of each person who buys oil from the subsequent purchaser, the number of barrels sold or delivered to each buyer, the price received for the oil from each buyer, and the date of the sale or delivery. (Title 122A, Art. 4.04(4).)

Sec. 202.104. Royalty Owner's Records

The owner of a royalty interest shall keep:

(1) a record of all money received as royalty from each producing leasehold in the state; and

(2) a copy of all settlement sheets furnished by a purchaser or operator or other statement showing the number of barrels of oil for which a royalty was received and the amount of tax deducted. (Title 122A, Art. 4.04(6) (part).)

Sec. 202.105. Carrier's Records

A carrier shall keep accurate monthly records of oil the carrier transports for hire, for itself or for its owners. The records shall be kept within the state and must show, for each shipment:

(1) the date the oil was received;

(2) the number of barrels of oil received;
(3) the person from whom the oil was received;
(4) the point of delivery;
(5) the person to whom the oil was delivered; and
(6) the manner of transportation. (Title 122A, Art. 4.04(7) (part).)

[Sections 202.106–202.150 reserved for expansion]

SUBCHAPTER D. PAYMENTS

Sec. 202.151. Tax Due

The tax imposed by this chapter is due at the office of the comptroller on the 25th day of each calendar month for oil produced during the preceding calendar month. (Title 122A, Arts. 4.03(8) (part), (9) (part).)

Sec. 202.152. Payment of Tax

The tax imposed by this chapter must be paid by legal tender or cashier's check payable to the state treasurer. (Title 122A, Art. 4.03(8) (part), 4.06 (part).)

Sec. 202.153. First Purchaser to Pay Tax

(a) A first purchaser shall pay the tax imposed by this chapter on oil that the first purchaser purchases from a producer and takes delivery on the premises where the oil is produced.

(b) A first purchaser shall withhold from payments to the producer the amount of tax that the first purchaser is required by Subsection (a) of this section to pay. This subsection does not affect a lease or contract between the state or a political subdivision of the state and a producer. (Title 122A, Arts. 4.03(1) (part), (4) (part), (8) (part).)

Sec. 202.154. Producer to Pay Tax on Oil Not Sold

If the producer does not sell oil produced in the same month it is produced, the producer shall pay the tax imposed by this chapter as if the oil were sold that month. In such a case, the working interest operator may pay the tax and deduct it from the interest of other interest holders. (Title 122A, Art. 4.03(5), (8) (part).)

Sec. 202.155. Purchaser to Pay Tax on Oil From Property Under Legal Constraint

(a) A purchaser shall pay the tax imposed by this chapter on oil purchased from property in bankruptcy, receivership, covered by an assignment, or subject to a legal proceeding.

(b) The purchaser shall withhold the amount of tax required to be paid by Subsection (a) of this section from payments to the producer, trustee, assignee, or other person claiming the payments and from payments the purchaser impounds or places in escrow.

(c) The purchaser is not liable for the amount of tax paid as required by this section to any claimant of payments for the purchase of oil. (Title 122A, Art. 4.05.)

Sec. 202.156. Tax Borne Ratably

The tax shall be borne ratably by all interested parties, including royalty interests. Producers or purchasers of oil, or both, are authorized and required to withhold from any payment due interested parties the proportionate amount of tax due. (Title 122A, Arts. 4.03(6), 4.04(7) (part).)

[Sections 202.157–202.200 reserved for expansion]

SUBCHAPTER E. REPORTS

Sec. 202.201. Producer's Report

On or before the 25th day of each calendar month, each producer or his authorized agent shall file a report with the comptroller. The report must contain the following information concerning oil produced during the preceding calendar month:

(1) the number of barrels of oil produced;
(2) the counties in which oil was produced;
(3) the names of the leases from which the oil was produced;
(4) the name and address of each first purchaser of the oil;
(5) the price received for the oil from each first purchaser; and
(6) other information the comptroller may reasonably require.

(Title 122A, Arts. 4.03(7) (part), 4.04(2).)

Sec. 202.202. First Purchaser's Report

(a) On or before the 25th day of each calendar month, each first purchaser or his authorized agent shall file a report with the comptroller. The report must contain the following information concerning oil purchased from a producer during the preceding calendar month:

(1) the number of barrels of oil purchased from each producer;
(2) the price paid each producer for the oil;
(3) the name and address of each producer;
(4) the counties in which the oil was produced;
(5) the names of the leases from which the oil was produced; and
(6) other information the comptroller may reasonably require.

(b) If the first purchaser is required to pay a tax on oil reported under this section, the first purchaser shall pay the tax when the report is filed. (Title 122A, Arts. 4.04(3) (part), 4.06 (part).)

Sec. 202.203. Subsequent Purchaser's Report

On or before the 25th day of each calendar month, each subsequent purchaser or his authorized agent shall file a report with the comptroller. The report must contain the following information concerning oil purchased by the subsequent purchaser during the preceding calendar month:

(1) the name and address of each person from whom the subsequent purchaser has purchased oil;
(2) the number of barrels of oil purchased from each person;
(3) the price paid each person for the oil;
(4) the disposition of the oil;
(5) the number of barrels of oil used, refined, or processed in any manner by the subsequent purchaser;
(6) the name and address of each person to whom the oil is sold;
(7) the number of barrels of oil sold to each person; and
(8) the price received from each person for each sale. (Title 122A, Art. 4.04(5) (part).)

Sec. 202.204. Reports of Carrier

A carrier shall provide information and file reports on the movements of oil if requested by the comptroller as often as required by the comptroller. (Title 122A, Art. 4.04(7) (part).)

Sec. 202.205. Transfer of Ownership

(a) If an oil-producing lease is transferred, or is to be transferred, the producer transferring the lease shall note the name and address of

the producer acquiring the lease and the date of the transfer on the last report covering the lease that he is required by Section 202.201 of this code to file.

(b) If an oil-producing lease is transferred, the producer acquiring the lease shall note the date of the transfer and the name and address of the person from whom the lease was acquired on the first report covering the lease that he is required by Section 202.201 of this code to file. (Title 122A, Art. 4.10.)

[Sections 202.206–202.250 reserved for expansion]

SUBCHAPTER F. LIABILITY FOR TAX

Sec. 202.251. Liability of Producer and Purchaser

The tax imposed by this chapter is the primary liability of the producer and is a liability of the first purchaser and each subsequent purchaser. Failure of the first purchaser to pay the tax does not relieve the producer or a subsequent purchaser from liability for the tax. A purchaser of oil produced in the state shall satisfy himself that the tax on that oil has been or will be paid by the person liable for the tax. (Title 122A, Arts. 4.03(1) (part), (3), (4) (part), (7) (part), (9) (part).)

Sec. 202.252. Producer's Remedy

If a purchaser withholds the amount of the tax imposed by this chapter from payments to a producer for the sale of oil and fails to pay the tax as provided by this chapter, the producer may sue the purchaser to recover the amount of the tax withheld, penalties and interest that have accrued from failure to pay the tax, court costs, and reasonable attorney's fees. (Title 122A, Art. 4.03(9) (part).)

[Sections 202.253–202.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT AND PENALTIES

Sec. 202.301. Delinquent Taxes: Penalty

(a) If a tax imposed by this chapter is not paid on or before the day it is due, the tax is delinquent, and a penalty of five percent of the delinquent tax is added to the amount due.

(b) If a tax imposed by this chapter is not paid within 30 days after it is due, an additional penalty of five percent is added to the amount due.

(c) The minimum penalty under this section is $1. (Title 122A, Arts. 4.03(10), 4.06 (part).)

Sec. 202.302. Tax Lien

The state has a prior and preferred lien for the amount of the taxes, penalties, and interest imposed by this chapter on:

(1) the oil to which the tax applies that is possessed by the producer, first purchaser, or subsequent purchaser;

(2) the leasehold interest, oil rights, the value of oil rights, and other interests, including oil produced and oil runs, owned by a person liable for the tax;

(3) equipment, tools, tanks, and other implements used on the lease from which the oil is produced; and

(4) any other property not exempt from forced sale owned by the person liable for the tax. (Title 122A, Arts. 4.03(4) (part), 4.07(1).)

Sec. 202.303. Forced Sale by Officer

(a) A peace officer may levy on oil for which the tax imposed by this chapter is due and unpaid by notice to the owner or person in charge of the oil.

(b) After notice to the owner or person in charge, the peace officer shall post a notice at the site of the oil that the oil will be sold to the highest bidder 10 days after the notice has been posted.

(c) After the notice has been posted for 10 days, the peace officer shall sell the oil to the highest bidder.

(d) The peace officer, except a ranger, may deduct 10 percent of the proceeds of the sale of the oil as his commission. The officer shall forward the balance, up to the amount of tax due, to the comptroller. The officer shall deliver any proceeds in excess of the tax due and the officer's commission, if any, to the owner of the oil. (Title 122A, Art. 4.-07(2).)

Sec. 202.304. Suit for Taxes; Sworn Denial

Rule 185, Texas Rules of Civil Procedure, applies to a suit by the attorney general for taxes imposed by this chapter if:

(1) the attorney general files as an exhibit a report or audit of the taxpayer; and

(2) the exhibit is supported by the comptroller's affidavit that the taxes shown to be due are past due and unpaid and that all payments and credits have been allowed. (Title 122A, Art. 4.08(3).)

Sec. 202.305. Unlawful Removal of Oil

On notice from the comptroller, no person may remove oil from a lease in this state if the owner or operator of the lease has failed to file a report as required by this chapter. (Title 122A, Art. 4.09.)

Sec. 202.306. Inspector Has Free Access

A person appointed by the Railroad Commission of Texas and holding the commission's certificate authorizing him to inspect oil wells, oil leases, pipelines, or railroad cars or tanks has the right of free access at all times to the wells, leases, pipelines, railroad cars and tanks, and motor-truck tanks for the purpose of inspecting the production or transportation of oil. (Title 122A, Art. 4.13.)

Sec. 202.307. Incomplete Records or Reports; Concealing Property Under Lien; Penalty

(a) A person commits an offense if the person:

(1) with intent to defraud the state, knowingly fails to keep a complete record that he is required by this chapter to keep;

(2) knowingly fails to file a complete report that he is required by this chapter to file;

(3) with intent to defraud the state, conceals property or equipment that is under a lien authorized by Section 202.302 of this code; or

(4) fails or refuses to permit the comptroller or attorney general to inspect a record or report required by this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $5,000;

(2) confinement in county jail for not less than one month nor more than six months; or

(3) both a fine and confinement. (Title 122A, Art. 4.12.)

[Sections 202.308–202.350 reserved for expansion]

SUBCHAPTER H. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

Sec. 202.351. Occupation Tax

The tax imposed by this chapter is an occupation tax. (Title 122A, Art. 4.02 (part).)

Sec. 202.352. Tax Set Aside

One-half of one percent of the tax collected under this chapter shall be deposited in the state treasury for the use of the comptroller to administer and enforce the provisions of this chapter, to be expended in the amounts and for the purposes prescribed in the General Appropriations Act. Money deposited under this section that is not spent at the end of a fiscal year reverts proportionally to the other funds to which the tax imposed by this chapter is paid. (Title 122A, Art. 4.11 (part).)

Sec. 202.353. Allocation of Revenue

After deducting the amount required to be deposited by Section 202.-352 of this code, the comptroller shall deposit one-fourth of the revenue collected from the tax imposed by this chapter to the credit of the available school fund and three-fourths to the tax clearance fund. (Title 122A, Art. 24.01 (part).)

CHAPTER 203. SULPHUR PRODUCTION TAX

SUBCHAPTER A. TAX IMPOSED

Section
203.001. Producer
203.002. Tax Imposed
203.003. Rate of Tax

[Sections 203.004–203.050 reserved for expansion]

SUBCHAPTER B. RECORDS, PAYMENTS, AND REPORTS

203.051. Producer's Records
203.052. Producer's Reports
203.053. When Tax Due

[Sections 203.054–203.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT AND PENALTIES

203.101. Delinquent Tax Penalty
203.102. Failure to Keep Records: Penalty

[Sections 203.103–203.150 reserved for expansion]

SUBCHAPTER D. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

203.151. Occupation Tax
203.152. Allocation of Revenue

CHAPTER 203. SULPHUR PRODUCTION TAX

SUBCHAPTER A. TAX IMPOSED

Sec. 203.001. Producer

In this chapter, "producer" means a person who owns, controls, manages, leases, or operates a sulphur mine, well, or shaft, or who produces sulphur by any method, system, or manner. (Title 122A, Art. 5.01 (part).)

Sec. 203.002. Tax Imposed

There is imposed a tax on each producer of sulphur. (Title 122A, Art. 5.01 (part).)

Sec. 203.003. Rate of Tax

The tax imposed by this chapter is at the rate of $1.03 a long ton or fraction of a long ton of sulphur produced in this state. (Title 122A, Art. 5.01 (part).)

[Sections 203.004–203.050 reserved for expansion]

SUBCHAPTER B. RECORDS, PAYMENTS, AND REPORTS

Sec. 203.051. Producer's Records

(a) A producer shall keep a complete record of all sulphur he produces in this state. A producer may destroy a record required by this section three years after the last entry in the record.

(b) The record shall be open at all times to inspection by the comptroller and the attorney general. (Title 122A, Art. 5.02 (part).)

Sec. 203.052. Producer's Reports

(a) On the first day of each January, April, July, and October each producer shall file a report with the comptroller on forms prescribed by the comptroller. The report must show the total amount of sulphur produced in the state by the person during the calendar quarter next preceding the day the report is due.

(b) A producer shall file other information or reports with the comptroller that the comptroller may reasonably require.

(c) The report shall be signed by the person making the report. If the person is not an individual, the report shall be signed by the president, secretary, or other authorized officer. (Title 122A, Arts. 5.01 (part), 5.03(2).)

Sec. 203.053. When Tax Due

The tax imposed by this chapter for each quarter is due at the time that the report required by Section 203.052 of this code is required to be filed for the quarter. Payment shall be to the treasurer. (Title 122A, Art. 5.01 (part).)

[Sections 203.054–203.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT AND PENALTIES

Sec. 203.101. Delinquent Tax Penalty

(a) If a tax imposed by this chapter is not paid by the day it is due, the tax is delinquent.

(b) If a tax imposed by this chapter is not paid by the 30th day after it is due, a penalty of 10 percent of the amount due is added to the amount due.

(c) The minimum penalty under this section is $1.

(d) The attorney general, or a district or county attorney at the direction of the attorney general, shall bring suit in the name of the state to recover a delinquent tax imposed by this chapter and penalties and interest that have accrued from failure to pay the tax. (Title 122A, Art. 5.-03(1).)

Sec. 203.102. Failure to Keep Records: Penalty

(a) A person who fails to keep a record that he is required by this chapter to keep shall forfeit to the state a penalty of not less than $500 nor more than $5,000.

(b) A person is subject to a separate penalty for each 10 days that he fails to keep a record that he is required by this chapter to keep. (Title 122A, Art. 5.02 (part).)

[Sections 203.103–203.150 reserved for expansion]

SUBCHAPTER D. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

Sec. 203.151. Occupation Tax

The tax imposed by this chapter is an occupation tax. (Title 122A, Art. 5.01 (part).)

Sec. 203.152. Allocation of Revenue

One-fourth of the revenue collected from the tax imposed by this chapter shall be deposited to the credit of the available school fund and three-fourths to the omnibus tax clearance fund. (Title 122A, Art. 24.01.)

SUBTITLE J. INHERITANCE TAX

CHAPTER 211. INHERITANCE AND ESTATE TAX

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

Section
211.001. Definitions
211.002. Day of Death of Presumed Decedent

[Sections 211.003–211.050 reserved for expansion]

SUBCHAPTER B. INHERITANCE TAX IMPOSED

211.051. Inheritance Tax Imposed
211.052. Composition of Estate
211.053. Estate Includes Property Transferred Under General Power of Appointment
211.054. Estate Includes Life Insurance Proceeds
211.055. Estate Includes Property Transferred in Contemplation of Death
211.056. Estate Includes Property Owned in Joint Tenancy With Right of Survivorship
211.057. Estate Includes Each Interest Created in Decedent's Property
211.058. Determination of Tax if Estate is Partly Subject to State Jurisdiction

[Sections 211.059–211.100 reserved for expansion]

SUBCHAPTER C. RATE OF TAX

Section
211.101. Class A Beneficiary—Rate of Tax
211.102. Class A Beneficiary Deduction
211.103. Class B Beneficiary—Rate of Tax
211.104. Class C Beneficiary—Rate of Tax
211.105. Class D Beneficiary—Rate of Tax
211.106. Class E Beneficiary—Rate of Tax

[Sections 211.107–211.150 reserved for expansion]

SUBCHAPTER D. EXEMPTIONS AND EXCLUSIONS

211.151. Exemption—Charitable, Educational, or Religious Organization
211.152. Exemption—State or Local Government
211.153. Exemption—Intangible Personal Property of Nonresident
211.154. Exemption—Bank Deposit of Nonresident
211.155. Exemption—Annuity Exempt From Federal Estate Tax
211.156. Exemption—Military Pay of Member of Armed Forces Dying in Combat Zone

[Sections 211.157–211.200 reserved for expansion]

SUBCHAPTER E. DEDUCTIONS

211.201. Deductions: Debts, Funeral Expenses, and Last Illness Expenses
211.202. Deduction—Tax
211.203. Deduction—Attorney's Fee or Court Cost
211.204. Deduction—Property Previously Taxed
211.205. Deduction—Property Left by Will to Personal Representative
211.206. Statement of Facts About Deduction

[Sections 211.207–211.250 reserved for expansion]

SUBCHAPTER F. VALUATION OF PROPERTY

211.251. Market Value
211.252. Valuation of Federal Bond, Savings Note, or Other Obligation
211.253. Valuation of Joint Tenancy With Right of Survivorship
211.254. Adoption of Actuarial Table
211.255. Day of Valuation
211.256. Alternate Day of Valuation
211.257. Determination of Value by Comptroller
211.258. Redetermination of Value
211.259. Appeal of Redetermination
211.260. Cooperation With Internal Revenue Service

[Sections 211.261–211.300 reserved for expansion]

SUBCHAPTER G. COLLECTION AND PAYMENT OF TAX

211.301. Payment by Personal Representative
211.302. Day on Which Payment is Due
211.303. Postponement of Day on Which Payment is Due
211.304. Receipt for Payment
211.305. Payment by Co-Owner of Property
211.306. Refund of Overpayment
211.307. Liability of Beneficiary

SUBCHAPTER G. COLLECTION AND PAYMENT OF TAX —Continued

Section

211.308. Discharge of Liability of Personal Representative
211.309. Compromise Agreement

[Sections 211.310–211.350 reserved for expansion]

SUBCHAPTER H. RETURNS, REPORTS, AND RECORDS

211.351. Information Reported by Court Clerk
211.352. Fee Charged by Court Clerk for Filing Reports
211.353. Filing of Tax Return
211.354. Report of Value of Estate for Federal Estate Tax Purposes
211.355. Forms

[Sections 211.356–211.400 reserved for expansion]

SUBCHAPTER I. TRANSFER OR DELIVERY OF PROPERTY AFTER DECEDENT'S DEATH

211.401. Transfer of Property Before Tax is Paid
211.402. Transfer of Property Without Notice to Comptroller
211.403. Examination of Documents or Safe Deposit Box With Court Order
211.404. Delivery of Document With Court Order
211.405. Examination of Document or Safe Deposit Box Without Court Order
211.406. Delivery of Document Without Court Order
211.407. Restriction on Removal of Contents of Safe Deposit Box

[Sections 211.408–211.450 reserved for expansion]

SUBCHAPTER J. ESTATE TAX BASED ON FEDERAL ESTATE TAX CREDIT

211.451. Purpose
211.452. Estate Tax Imposed
211.453. Amount of Tax
211.454. Determining Tax if Estate is Partly in and Partly Outside State
211.455. Payment of Tax Before Partition and Distribution

[Sections 211.456–211.500 reserved for expansion]

SUBCHAPTER K. ENFORCEMENT

211.501. Comptroller's Authority to Examine Books and Other Property
211.502. Tax Lien
211.503. Duration of Lien
211.504. Property Exempt from Lien
211.505. Suit to Enforce Lien
211.506. Release of Lien After Tax is Paid
211.507. Release of Lien Before Tax is Paid
211.508. Penalty Relating to Improper Transfer of Property
211.509. Penalty for Failure to File Report or Return
211.510. Penalty for Failure to Pay Tax or For Late Payment
211.511. Interest on Delinquent Taxes
211.512. Criminal Penalty for Failure to File Report

[Sections 211.513–211.550 reserved for expansion]

SUBCHAPTER L. DISPOSITION OF REVENUE

Section
211.551. General Revenue Fund

SUBTITLE J. INHERITANCE TAX

CHAPTER 211. INHERITANCE AND ESTATE TAX

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

Sec. 211.001. Definitions

In this chapter:

(1) "Market value" means the price for which property will sell if it is offered for sale by a person who desires to sell but is not obligated to sell and is bought by a person who desires to buy but is not compelled to buy.

(2) "Personal representative" means an executor, independent executor, administrator, temporary administrator, trustee, or another person administering the affairs of a decedent's estate.

(3) "Property" includes real and personal property, corporeal and incorporeal property, and any interest in real, personal, corporeal, or incorporeal property.

(4) "Will" includes a codicil and includes a testamentary instrument that appoints an executor or that revokes another will. (Title 122A, Art. 14.00A, Subds. (c), (e), (f), (j).)

Sec. 211.002. Day of Death of Presumed Decedent

If a court enters a final decree presuming a missing person to be dead, the day of the person's death for the purposes of this chapter is the day on which the court enters the decree establishing the fact of death regardless of the presumed day of death established by the decree. (Title 122A, Art. 14.00A, Subd. (b).)

[Sections 211.003–211.050 reserved for expansion]

SUBCHAPTER B. INHERITANCE TAX IMPOSED

Sec. 211.051. Inheritance Tax Imposed

A tax is imposed on a beneficiary of a decedent's estate for the privilege of succeeding to the ownership or use of a share of the decedent's estate that is subject to the jurisdiction of this state. (Title 122A, Art. 14.01, Sec. (A) (part).)

Sec. 211.052. Composition of Estate

A decedent's estate is composed of the decedent's property that, by a will, by the laws of descent and distribution, or by a grant, deed, sale, or gift, is transferred absolutely or in trust to or for the use of another person and is transferred after the decedent's death or with the intent that the transfer take effect in possession or enjoyment after the decedent's death. (Title 122A, Art. 14.01, Sec. (A) (part).)

Sec. 211.053. Estate Includes Property Transferred Under General Power of Appointment

A decedent's estate includes property transferred to or for the use of another person under a general power of appointment exercised by the decedent in a will. (Title 122A, Art. 14.01, Sec. (A) (part).)

Sec. 211.054. Estate Includes Life Insurance Proceeds

(a) A decedent's estate includes the life insurance proceeds that are to be paid to the personal representative of the decedent under an insurance policy owned by the decedent on the decedent's life.

(b) A decedent's estate includes the life insurance proceeds in excess of $40,000 that are to be paid to beneficiaries, excluding the decedent's personal representative, under insurance policies owned by the decedent on the decedent's life. Section 211.051 of this code does not impose an inheritance tax on the life insurance proceeds not in excess of $40,000. (Title 122A, Art. 14.01, Sec. (A) (part).)

Sec. 211.055. Estate Includes Property Transferred in Contemplation of Death

(a) A decedent's estate includes property that, under Subsection (b) of this section, is presumed to be transferred by the decedent in contemplation of death.

(b) A transfer of property by a decedent is presumed to be made in contemplation of death, unless the contrary is shown, if the property is transferred within three years before the day of the decedent's death and:

(1) the property is a material part of the decedent's total property; or

(2) the transfer of the property is made as a final distribution and without adequate consideration. (Title 122A, Art. 14.01, Sec. (B).)

Sec. 211.056. Estate Includes Property Owned in Joint Tenancy With Right of Survivorship

A decedent's estate includes a decedent's share of property owned in joint tenancy with a right of survivorship in the tenants. (Title 122A, Art. 14.011, Sec. (1) (part).)

Sec. 211.057. Estate Includes Each Interest Created in Decedent's Property

Each interest, including an estate for years, life estate, and remainder, that is created in the decedent's property and that is transferred to or for the use of another person after the decedent's death is valued and taxed separately. (Title 122A, Art. 14.08 (part).)

Sec. 211.058. Determination of Tax if Estate is Partly Subject to State Jurisdiction

If part of a decedent's estate is subject to the jurisdiction of Texas and part of the estate is not subject to the jurisdiction of Texas, the amount of the inheritance tax on a beneficiary who succeeds to the ownership or use of a part subject to this state's jurisdiction is determined as follows:

$$\text{Amount of tax} = \text{Amount of tax for which the beneficiary would be liable if the entire estate were subject to this state's jurisdiction} \times \frac{\text{Value, before deductions, of the beneficiary's part of the estate that is subject to this state's jurisdiction}}{\text{Value, before deductions, of the beneficiary's part of the entire estate}}$$

(Title 122A, Art. 14.07.)

[Sections 211.059–211.100 reserved for expansion]

SUBCHAPTER C. RATE OF TAX

Sec. 211.101. Class A Beneficiary—Rate of Tax

(a) A person is a Class A beneficiary of a decedent's estate if the person succeeds to the ownership or use of a share of the estate and is:

(1) the spouse of the decedent;

(2) a direct lineal descendant of the decedent's spouse;

(3) a direct lineal descendant or ascendant of the decedent;

(4) a legally adopted child of the decedent;

(5) a direct lineal descendant of the decedent's legally adopted child; or

(6) the spouse of the decedent's child.

(b) The rate of the inheritance tax imposed on a Class A beneficiary of a decedent's estate is:

(1) one percent of the value, not exceeding $50,000, of the beneficiary's share of the estate;

(2) two percent of the value, exceeding $50,000 but not exceeding $100,000, of the beneficiary's share of the estate;

(3) three percent of the value, exceeding $100,000 but not exceeding $200,000, of the beneficiary's share of the estate;

(4) four percent of the value, exceeding $200,000 but not exceeding $500,000, of the beneficiary's share of the estate;

(5) five percent of the value, exceeding $500,000 but not exceeding $1,000,000, of the beneficiary's share of the estate; and

(6) six percent of the value, exceeding $1,000,000, of the beneficiary's share of the estate. (Title 122A, Art. 14.02, Sec. (1).)

Sec. 211.102. Class A Beneficiary Deduction

(a) An amount, established by Subsection (c) of this section, of a Class A beneficiary's share of a decedent's estate may be deducted from the beneficiary's share of the estate before determination of the inheritance tax.

(b) If there is more than one Class A beneficiary of a decedent's estate and if the total value of the Class A beneficiaries' shares exceeds the deduction established by Subsection (c) of this section, each beneficiary's part of the deduction is proportional to the value of the beneficiary's share of the estate transferred to or for the use of Class A beneficiaries. However, if a Class A beneficiary's deduction determined under this subsection is less than $25,000, the deduction is increased to $25,000.

(c) The deduction is:

(1) $200,000 if the decedent dies after August 31, 1978, and before September 1, 1982;

(2) $250,000 if the decedent dies after August 31, 1982, and before September 1, 1985; or

(3) $300,000 if the decedent dies after August 31, 1985. (Title 122A, Art. 14.02, Secs. (2), (3), (4).)

Sec. 211.103. Class B Beneficiary—Rate of Tax

(a) The United States is a Class B beneficiary of a decedent's estate if it succeeds to the ownership or use of a share of the estate and its share is to be used in this state.

(b) The rate of the inheritance tax imposed on a Class B beneficiary of a decedent's estate is:

(1) one percent of the value, exceeding $25,000 but not exceeding $50,000, of the beneficiary's share of the state;

(2) two percent of the value, exceeding $50,000 but not exceeding $100,000, of the beneficiary's share of the estate;

(3) three percent of the value, exceeding $100,000 but not exceeding $200,000, of the beneficiary's share of the estate;

(4) four percent of the value, exceeding $200,000 but not exceeding $500,000, of the beneficiary's share of the estate;

(5) five percent of the value, exceeding $500,000 but not exceeding $1,000,000, of the beneficiary's share of the estate; and

(6) six percent of the value, exceeding $1,000,000, of the beneficiary's share of the estate. (Title 122A, Art. 14.03.)

Sec. 211.104. Class C Beneficiary—Rate of Tax

(a) A person is a Class C beneficiary of a decedent's estate if the person succeeds to the ownership or use of a share of the estate and is:

(1) a brother or sister of the decedent; or

(2) a direct lineal descendant of the decedent's brother or sister.

(b) The rate of the inheritance tax imposed on a Class C beneficiary of a decedent's estate is:

(1) 3 percent of the value, exceeding $10,000 but not exceeding $25,000, of the beneficiary's share of the estate;

(2) 4 percent of the value, exceeding $25,000 but not exceeding $50,000, of the beneficiary's share of the estate;

(3) 5 percent of the value, exceeding $50,000 but not exceeding $100,000, of the beneficiary's share of the estate;

(4) 6 percent of the value, exceeding $100,000 but not exceeding $250,000, of the beneficiary's share of the estate;

(5) 7 percent of the value, exceeding $250,000 but not exceeding $500,000, of the beneficiary's share of the estate;

(6) 8 percent of the value, exceeding $500,000 but not exceeding $750,000, of the beneficiary's share of the estate;

(7) 9 percent of the value, exceeding $750,000 but not exceeding $1,000,000, of the beneficiary's share of the estate; and

(8) 10 percent of the value, exceeding $1,000,000, of the beneficiary's share of the estate. (Title 122A, Art. 14.04.)

Sec. 211.105. Class D Beneficiary—Rate of Tax

(a) A person is a Class D beneficiary of a decedent's estate if the person succeeds to the ownership or use of a share of the estate and is:

(1) an uncle or aunt of the decedent; or

(2) a direct lineal descendant of the decedent's uncle or aunt.

(b) The rate of the inheritance tax imposed on a Class D beneficiary of a decedent's estate is:

(1) 4 percent of the value, exceeding $1,000 but not exceeding $10,000, of the beneficiary's share of the estate;

(2) 5 percent of the value, exceeding $10,000 but not exceeding $25,000, of the beneficiary's share of the estate;

(3) 6 percent of the value, exceeding $25,000 but not exceeding $50,000, of the beneficiary's share of the estate;

(4) 7 percent of the value, exceeding $50,000 but not exceeding $100,000, of the beneficiary's share of the estate;

(5) 10 percent of the value, exceeding $100,000 but not exceeding $500,000, of the beneficiary's share of the estate;

(6) 12 percent of the value, exceeding $500,000 but not exceeding $1,000,000, of the beneficiary's share of the estate; and

(7) 15 percent of the value, exceeding $1,000,000, of the beneficiary's share of the estate. (Title 122A, Art. 14.05.)

Sec. 211.106. Class E Beneficiary—Rate of Tax

(a) A person is a Class E beneficiary of a decedent's estate if the person succeeds to the ownership or use of a share of the estate and is not included in another class of beneficiaries.

(b) The rate of the inheritance tax imposed on a Class E beneficiary of a decedent's estate is:

(1) 5 percent of the value, exceeding $500 but not exceeding $10,000, of the beneficiary's share of the estate;

(2) 6 percent of the value, exceeding $10,000 but not exceeding $25,000, of the beneficiary's share of the estate;

(3) 8 percent of the value, exceeding $25,000 but not exceeding $50,000, of the beneficiary's share of the estate;

(4) 10 percent of the value, exceeding $50,000 but not exceeding $100,000, of the beneficiary's share of the estate;

(5) 12 percent of the value, exceeding $100,000 but not exceeding $500,000, of the beneficiary's share of the estate;

(6) 15 percent of the value, exceeding $500,000 but not exceeding $1,000,000, of the beneficiary's share of the estate; and

(7) 20 percent of the value, exceeding $1,000,000, of the beneficiary's share of the estate. (Title 122A, Art. 14.06.)

[Sections 211.107–211.150 reserved for expansion]

SUBCHAPTER D. EXEMPTIONS AND EXCLUSIONS

Sec. 211.151. Exemption—Charitable, Educational, or Religious Organization

(a) In this section, "charitable, educational, or religious organization" includes an organization that is organized to conduct a program of physical fitness, character development, or citizenship training or a similar program.

(b) Section 211.051 of this code does not impose an inheritance tax on a charitable, educational, or religious organization if it succeeds to the ownership or use of a share of a decedent's estate and if no part of the net earnings of the organization inures to the benefit of a private shareholder or individual. (Title 122A, Art. 14.015 (part).)

Sec. 211.152. Exemption—State or Local Government

Section 211.051 of this code does not impose an inheritance tax on this state or a city or town in this state if it succeeds to the ownership or use of a share of a decedent's estate and if the property is to be used for a public purpose. (Title 122A, Art. 14.015 (part).)

Sec. 211.153. Exemption—Intangible Personal Property of Nonresident

(a) Section 211.051 of this code does not impose an inheritance tax on the decedent's intangible personal property if the decedent at the time of death is a resident of another state that at the time of the decedent's death:

(1) does not impose a transfer or inheritance tax that is determined on the value of the intangible personal property of a resident of this state; or

(2) does not impose, on a reciprocal basis with other states, a transfer or inheritance tax that is determined on the value of the intangible personal property of a nonresident of that state.

(b) Subsection (a) of this section does not establish an exemption if the decedent at the time of death is a resident of a state that does not have an inheritance tax law. (Title 122A, Art. 14.01, Secs. (C), (D).)

Sec. 211.154. Exemption—Bank Deposit of Nonresident

Section 211.051 of this code does not impose an inheritance tax on the decedent's money that is deposited in a bank doing business in this state or the decedent's share or share account in a savings and loan association doing business in this state if the decedent, at the time of death, is not engaged in business in this state and is:

(1) a nonresident of this state and a citizen of a foreign country; or

(2) a nonresident citizen of the United States residing in a foreign country. (Title 122A, Art. 14.015 (part).)

Sec. 211.155. Exemption—Annuity Exempt From Federal Estate Tax

(a) Section 211.051 of this code does not impose an inheritance tax on the value of an annuity or other payment that is paid to a beneficiary of the decedent, except the decedent's personal representative, and that is exempt from the federal estate tax by Section 2039(c), (d), or (e), Internal Revenue Code of 1954, as amended.

(b) The exemption established by Subsection (a) of this section for an annuity that is exempt from the federal estate tax by Section 2039(d), Internal Revenue Code of 1954, as amended, applies only to an estate of a decedent who dies after November 28, 1969.

(c) The exemption established by Subsection (a) of this section for an annuity that is exempt from the federal estate tax by Section 2039(e), Internal Revenue Code of 1954, as amended, applies only to an estate of a decedent who dies after December 31, 1976.

(d) Except as provided by Section 112.155 of this code, the state may not allow or pay any interest on an overpayment of the inheritance tax that results from the application of an exemption established by Subsection (b) or (c) of this section. (Title 122A, Art. 14.015 (part); Acts 65th Legis., Reg.Sess., Ch. 96, Sec. 2.)

Sec. 211.156. Exemption—Military Pay of Member of Armed Forces Dying in Combat Zone

(a) In this section, "combat zone" means an area that the president of the United States by executive order designates as an area in which the armed forces of the United States are or have engaged in combat.

(b) Section 211.051 of this code does not impose an inheritance tax on military pay or a military allowance paid to a beneficiary of the decedent if the decedent is a resident of the state and is:

(1) killed in action in a combat zone while in active service of the armed forces of the United States; or

(2) legally declared dead after being classified by the armed forces as missing in action.

(c) If a member of the armed forces of the United States is legally declared dead after being classified by the armed forces as missing in action and if the inheritance tax imposed on the beneficiaries of the decedent's estate is unpaid and not delinquent, the decedent is presumed for the purpose of this section to have died after August 31, 1978. (Title 122A, Art. 14.015 (part).)

[Sections 211.157–211.200 reserved for expansion]

SUBCHAPTER E. DEDUCTIONS

Sec. 211.201. Deductions: Debts, Funeral Expenses, and Last Illness Expenses

Debts due by the estate, funeral expenses, and expenses incidental to the last illness of the deceased, which are due and unpaid at the time of death, may be deducted from the estate before determination of the inheritance tax. (Title 122A, Art. 14.10 (part).)

Sec. 211.202. Deduction—Tax

A federal, state, county, or municipal tax that is owed by a decedent and that is due at the time of the decedent's death may be deducted from the decedent's estate before determination of the inheritance tax. (Title 122A, Art. 14.10 (part).)

Sec. 211.203. Deduction—Attorney's Fee or Court Cost

An attorney's fee or court cost that a decedent's estate accrues in assessing or collecting a tax imposed by this chapter may be deducted from the decedent's estate before determination of the inheritance tax. (Title 122A, Art. 14.10 (part).)

Sec. 211.204. Deduction—Property Previously Taxed

(a) A percentage, established by Subsection (b) of this section, of the value of property in a decedent's estate that was received by the decedent as a beneficiary of the estate of a person who died within 10 years before the decedent's death may be deducted from the estate before determination of the inheritance tax if:

(1) the property is located in the United States; and

(2) an inheritance tax has been paid on the property after the death of the prior decedent.

(b) The deduction is determined against the property's value on which the inheritance tax is determined and is paid after the death of the prior decedent. The deductible amount is:

(1) 100 percent of the property's value if the present decedent dies during the first year after the day of death of the prior decedent;

(2) 90 percent of the property's value if the present decedent dies during the second year after the day of death of the prior decedent;

(3) 80 percent of the property's value if the present decedent dies during the third year after the day of death of the prior decedent;

(4) 70 percent of the property's value if the present decedent dies during the fourth year after the day of death of the prior decedent;

(5) 60 percent of the property's value if the present decedent dies during the fifth year after the day of death of the prior decedent;

(6) 50 percent of the property's value if the present decedent dies during the sixth year after the day of death of the prior decedent;

(7) 40 percent of the property's value if the present decedent dies during the seventh year after the day of death of the prior decedent;

(8) 30 percent of the property's value if the present decedent dies during the eighth year after the day of death of the prior decedent;

(9) 20 percent of the property's value if the present decedent dies during the ninth year after the day of death of the prior decedent; or

(10) 10 percent of the property's value if the present decedent dies during the tenth year after the day of death of the prior decedent. (Title 122A, Art. 14.10 (part).)

Sec. 211.205. Deduction—Property Left by Will to Personal Representative

(a) The value of property that a decedent leaves by a will to a personal representative of the decedent's estate instead of a commission and that does not exceed a reasonable compensation for the representative's services may be deducted from the decedent's estate before determination of the inheritance tax.

(b) The comptroller and the judge of a court having probate jurisdiction of the decedent's estate shall determine the amount of compensation that is reasonable for the personal representative's services. (Title 122A, Art. 14.09.)

Sec. 211.206. Statement of Facts About Deduction

(a) If the personal representative of a decedent claims a deduction under this chapter for the decedent's estate, the representative shall prepare duplicate sworn statements of facts showing that the estate qualifies for the deduction.

(b) A deduction is not allowed unless the personal representative files the statement with the comptroller and with the clerk of a court having probate jurisdiction of the decedent's estate. (Title 122A, Art. 14.10 (part).)

[Sections 211.207–211.250 reserved for expansion]

SUBCHAPTER F. VALUATION OF PROPERTY

Sec. 211.251. Market Value

The inheritance tax is determined on the market value of the property composing a decedent's estate. If the property does not have a market value, the tax is determined on the real value of the property. (Title 122A, Art. 14.11, Sec. (A) (part).)

Sec. 211.252. Valuation of Federal Bond, Savings Note, or Other Obligation

A bond of the United States, a savings note, or another obligation that is part of a decedent's estate and that is received by the United States at par value with accrued interest in payment of a tax imposed by the United States is valued for the purposes of this chapter at the amount for which it is used to pay the federal tax. (Title 122A, Art. 14.11, Sec. (A) (part).)

Sec. 211.253. Valuation of Joint Tenancy With Right of Survivorship

(a) A share of property that is owned in a joint tenancy with a right of survivorship in the tenants and that is part of a decedent's estate is valued for the purposes of this chapter as follows:

(1) if the decedent acquired the share by making contributions to the tenancy, the share is valued in proportion to the value contributed to the tenancy by the decedent, minus any consideration that the decedent received or that accrued to the decedent from another tenant; or

(2) if the decedent acquired the share as a gift from a person who is not a tenant, the share is valued in proportion to the value contributed to the tenancy by the donor.

(b) If a person who is not a tenant contributes to a joint tenancy with a right of survivorship and gives away the share acquired by the contributions and if there is no evidence of who the recipient of the gift is to be, it is presumed that the gift is made equally to each tenant.

(c) If there is no evidence to the contrary, it is presumed that each tenant of a joint tenancy with a right of survivorship contributed equally to the tenancy. (Title 122A, Art. 14.011, Secs. (1) (part), (2), (3).)

Sec. 211.254. Adoption of Actuarial Table

The comptroller shall adopt an actuarial table for determining the value of an estate for years, life estate, remainder, or annuity that is part of a decedent's estate. (Title 122A, Art. 14.08 (part).)

Sec. 211.255. Day of Valuation

Except as provided by Section 211.256 of this code, property composing a decedent's estate is valued as of the day of the decedent's death. (Title 122A, Art. 14.11, Sec. (B) (part).)

Sec. 211.256. Alternate Day of Valuation

(a) If the personal representative of a decedent's estate elects, the property composing the decedent's estate may be valued as follows:

(1) if the property is distributed, sold, exchanged, or disposed of in another manner within six months after the day of the decedent's death, it is valued as of the day of the distribution, sale, exchange, or other disposition; or

(2) if the property is not distributed, sold, exchanged, or disposed of in another manner within six months after the day of the decedent's death, it is valued as of the day that is six months after the day of the decedent's death.

(b) If the personal representative elects to value the estate as of the day provided by Subsection (a) of this section and if the estate contains property that is affected in value by the mere lapse of time, the property affected by the lapse of time is valued as follows:

(1) it is valued as of the day of the decedent's death; and

(2) its value as of the day of the decedent's death is adjusted to account for a change in its value, not due to the mere lapse of time, as of the day provided by Subsection (a) of this section. (Title 122A, Art. 14.11, Sec. (B) (part).)

Sec. 211.257. Determination of Value by Comptroller

(a) The comptroller may value property that is part of a decedent's estate to determine the inheritance tax.

(b) If the comptroller considers a property value reported by the personal representative of a decedent to be incorrect, the comptroller may appraise the property or have it appraised to determine its value.

(c) The comptroller, to value property, may take into consideration the value of the property as determined by the federal government for federal estate tax purposes. (Title 122A, Art. 14.11, Sec. (C), Subsecs. (1), (2).)

Sec. 211.258. Redetermination of Value

The personal representative of a decedent, a beneficiary of a decedent's estate, or another interested person may petition the comptroller to redetermine the value of property that is part of the decedent's estate. (Title 122A, Art. 14.11, Sec. (C) Subsec. (3).)

Sec. 211.259. Appeal of Redetermination

(a) A person who petitions the comptroller under Section 211.258 of this code to redetermine the value of part of a decedent's estate may appeal the comptroller's decision to the district court of the county in which the estate is administered or, if there is no administration or if the

decedent is a nonresident of the state, to the district court of the county in which the principal part of the estate is located.

(b) The person must institute the appeal proceeding by filing a petition with the district court within 30 days after the comptroller's decision is final and appealable.

(c) The district court shall review the comptroller's decision by trial de novo. (Title 122A, Art. 14.11, Sec. (C), Subsec. (4).)

Sec. 211.260. Cooperation With Internal Revenue Service

(a) The comptroller shall confer with the Internal Revenue Service of the United States to determine the value of a decedent's estate that is located in this state and that is valued by the United States for tax purposes.

(b) The comptroller shall cooperate with the Internal Revenue Service on matters relating to a decedent's estate located in this state. The comptroller may exchange information with the service about these matters. (Title 122A, Art. 14.13, Sec. (C).)

[Sections 211.261-211.300 reserved for expansion]

SUBCHAPTER G. COLLECTION AND PAYMENT OF TAX

Sec. 211.301. Payment by Personal Representative

The personal representative of a decedent's estate shall pay to the comptroller a tax determined under this chapter on the estate. (Title 122A, Art. 14.16, Sec. (C) (part).)

Sec. 211.302. Day on Which Payment is Due

Payment of a tax determined under this chapter on a decedent's estate is due nine months after the day of the decedent's death. (Title 122A, Art. 14.16, Sec. (A) (part).)

Sec. 211.303. Postponement of Day on Which Payment is Due

(a) If the personal representative of a decedent's estate requests the comptroller to postpone the day on which a tax imposed by this chapter is due and if the representative shows to the comptroller that the payment of the tax on the day provided by Section 211.302 of this code will result in an undue hardship to a beneficiary of the estate, the comptroller shall postpone the day on which the payment is due. Payment of the tax is due on the day to which the comptroller postpones payment.

(b) If the comptroller conducts a hearing to redetermine the amount of tax due or if a person litigates an issue that affects the amount of a tax due, the comptroller shall postpone the day on which the payment of the amount in question is due. The comptroller may not postpone the day of payment to later than the 30th day after the day on which the hearing or litigation ends. (Title 122A, Art. 14.16, Secs. (A) (part), (B).)

Sec. 211.304. Receipt for Payment

The comptroller shall issue a receipt for payment of a tax imposed by this chapter. The comptroller shall deliver the receipt to the person making the payment or to the person's attorney of record. (Title 122A, Art. 14.16, Sec. (C) (part).)

Sec. 211.305. Payment by Co-Owner of Property

(a) A person who is a co-owner of property on which a tax imposed by this chapter is determined may pay a share of the tax that is proportionate to the share of the property that the person owns.

(b) The payment relieves the co-owner's share of the property from a lien imposed under this chapter against the property and from any interest or penalties after the payment.

(c) After the payment, the comptroller shall release the co-owner's share of the property from a lien imposed under this chapter against the property. (Title 122A, Art. 14.16, Sec. (D); Art. 14.19, Sec. (A) (part).)

Sec. 211.306. Refund of Overpayment

If a person who is liable for a tax imposed by this chapter pays, by a mistake of fact or law, an amount to the comptroller that is more than the tax due, the comptroller may refund the overpayment by issuing a warrant on the state treasury from funds appropriated for the purpose. (Title 122A, Art. 14.16, Sec. (E).)

Sec. 211.307. Liability of Beneficiary

(a) Any person who acquires a part of a decedent's estate is personally liable for the taxes that are imposed by this chapter and that are determined on that part of the estate.

(b) The person acquiring part of the decedent's estate is charged with notice of:

(1) the unpaid taxes and the related penalties, interest, and costs that are imposed under this chapter and that are determined on that part of the estate; and

(2) the liens that are imposed under this chapter and that secure payment of the unpaid taxes, penalties, interest, and costs. (Title 122A, Art 14.18, Sec. (C).)

Sec. 211.308. Discharge of Liability of Personal Representative

(a) If the personal representative of a decedent's estate, in writing, requests the comptroller to determine the amount of a tax that is determined on the estate under this chapter and requests a discharge from personal liability for the tax, the comptroller shall notify the representative of the amount of any taxes, penalties, or interest due. The comptroller shall give the notice to the representative as soon as possible but within one year after the day the request is made or after the day all tax returns required by this chapter have been filed, whichever is later.

(b) If the amount determined by the comptroller is paid, the comptroller shall discharge the personal representative from personal liability for any deficiency in the tax that is subsequently determined to be due. The representative is entitled to a written receipt showing the discharge. (Title 122A, Art. 14.20, Sec. (C).)

Sec. 211.309 Compromise Agreement

(a) If the comptroller claims that a decedent was domiciled in this state at the time of death and a taxing authority of another state claims that the decedent was domiciled in that state at the time of death, the comptroller may agree in writing to a compromise with the other taxing authority and the personal representative of the decedent's estate.

(b) The compromise agreement shall set an amount that is accepted by the comptroller in satisfaction of the tax that is determined under this chapter on the decedent's estate and in satisfaction of any related penalty or interest imposed under this chapter before the agreement takes effect. The agreement shall set the amount that the other taxing authority accepts in satisfaction of a death tax, penalty, or interest.

(c) To be valid, the agreement must be approved by the attorney general. (Title 122A, Art. 14.13, Sec. (D).)

[Sections 211.310–211.350 reserved for expansion]

SUBCHAPTER H. RETURNS, REPORTS, AND RECORDS

Sec. 211.351. Information Reported by Court Clerk

(a) A clerk of a court that has probate jurisdiction of a decedent's estate and that has received an inventory and appraisement and a list of claims of a decedent's estate shall report the following information to the comptroller:

(1) a certified copy of the inventory and appraisement and the list of claims;

(2) a certified copy of the decedent's will or, if there is no will, proof of heirship; and

(3) other information requested by the comptroller relating to the decedent's estate.

(b) The clerk shall report the information described by Subsections (a)(1) and (2) of this section within 20 days after the day the court approves the inventory and appraisement and the list of claims. The clerk shall report the information described by Subsection (a)(3) of this section within 10 days after the day the comptroller requests the information. (Title 122A, Art. 14.14, Sec. (B) (part).)

Sec. 211.352. Fee Charged by Court Clerk for Filing Reports

(a) A court clerk is entitled to a fee of $1 for each estate about which the clerk reports information to the comptroller as required by Section 211.351 of this code.

(b) The fee shall be assessed against the estate as a court cost.

(c) The clerk shall account for the fee as a fee of office. (Title 122A, Art. 14.14, Sec. (B) (part).)

Sec. 211.353. Filing of Tax Return

(a) The personal representative of a decedent's estate shall file a tax return with the comptroller within nine months after the day of the decedent's death.

(b) The return shall contain information that the comptroller requests for the enforcement of this chapter. If any information that the comptroller requests is not available at the time the return is due, the comptroller shall provide additional time for the filing of the information. (Title 122A, Art. 14.14, Sec. (C).)

Sec. 211.354. Report of Value of Estate for Federal Estate Tax Purposes

(a) The personal representative of a decedent's estate shall file a report with the comptroller showing the final assessment and determination of the value of the estate as assessed and determined by the federal government for federal estate tax purposes. The report shall contain other information that the comptroller requests and that relates to the value of the estate for federal estate tax purposes.

(b) The representative shall file the report within 30 days after the day that notice is received of the federal government's final assessment and determination of the value of the estate for federal estate tax purposes. (Title 122A, Art. 14.14, Sec. (D) (part).)

Sec. 211.355. Forms

The comptroller shall prescribe a form for a tax return or report required by this chapter and shall prescribe other forms that request infor-

mation necessary for the comptroller to collect the taxes imposed by this chapter. (Title 122A, Art. 14.13, Sec. (B) (part); Art. 14.14, Sec. (D) (part).)

[Sections 211.356–211.400 reserved for expansion]

SUBCHAPTER I. TRANSFER OR DELIVERY OF PROPERTY AFTER DECEDENT'S DEATH

Sec. 211.401. Transfer of Property Before Tax is Paid

(a) Neither a domestic corporation or association nor the personal representative of a decedent's estate may transfer or deliver a decedent's property, including a stock or bond of a domestic corporation or association, to a beneficiary of the decedent's estate unless a tax determined under this chapter on the property is paid or the tax lien imposed by this chapter on the property is released.

(b) A corporation, association, personal representative, or bondsman of a corporation, association, or representative that violates Subsection (a) of this section is liable for the tax, a related penalty, interest, and the costs of the collection of the tax, penalty, and interest. (Title 122A, Art. 14.20, Sec. (A).)

Sec. 211.402. Transfer of Property Without Notice to Comptroller

(a) A person who has possession or control of a decedent's security, deposit, or other asset may not transfer or deliver the security, deposit, or other asset to any of the following persons unless notice of the time and place of the transfer or delivery is given to the comptroller at least 10 days before the transfer or delivery:

(1) the personal representative or other legal representative of the decedent;

(2) a beneficiary of the decedent's estate; or

(3) a survivor of the decedent who holds the security, deposit, or other asset jointly with the decedent.

(b) The person transferring or delivering the security, deposit, or other asset shall do so in the presence of the comptroller unless the comptroller waives this requirement. The comptroller may authorize the judge of a court having probate jurisdiction in the county in which the transfer or delivery takes place to act as a comptroller's agent at the transfer or delivery.

(c) At the time that a security, deposit, or other asset is transferred or delivered in compliance with this section, the comptroller may examine the security, deposit, or other asset.

(d) A person who transfers or delivers a security, deposit, or other asset in violation of Subsection (a) of this section or who does not permit the comptroller, while acting under Subsection (c) of this section, to examine the security, deposit, or other asset, is liable for a tax or interest determined under this chapter on the security, deposit, or other asset. (Title 122A, Art. 14.21 (part).)

Sec. 211.403. Examination of Documents or Safe Deposit Box With Court Order

(a) A judge of a court having probate jurisdiction of a decedent's estate may order a person to permit a court representative named in the order to examine a decedent's documents or safe deposit box if it is shown to the judge that:

(1) the person may possess or control the documents or that the person leased the safe deposit box to the decedent; and

(2) the documents or safe deposit box may contain a will of the decedent, a deed to a burial plot in which the decedent is to be buried, or an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall examine the decedent's documents or safe deposit box in the presence of:

(1) the judge ordering the examination, an agent of the judge, or an agent of the comptroller; and

(2) the person who has possession or control of the documents or who leased the safe deposit box or, if the person is a corporation, an officer of the corporation or an agent of an officer. (Title 122A, Art. 14.22 (part).)

Sec. 211.404. Delivery of Document With Court Order

(a) A judge who orders an examination by a court representative of a decedent's documents or safe deposit box under Section 211.403 of this code may order the person who possesses or controls the documents or who leases the safe deposit box to permit the court representative to take possession of the following documents:

(1) a will of the decedent;

(2) a deed to a burial plot in which the decedent is to be buried; or

(3) an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall deliver:

(1) the will to the clerk of a court that has probate jurisdiction and that is located in the same county as the court of the judge who ordered the examination;

(2) the burial plot deed to the person designated by the judge in the order for the examination; or

(3) the insurance policy to a beneficiary named in the policy.

(c) A court clerk to whom a will is delivered under Subsection (b) of this section shall issue a receipt for the will to the court representative who delivers it. (Title 122A, Art. 14.22 (part).)

Sec. 211.405. Examination of Document or Safe Deposit Box Without Court Order

(a) A person who possesses or controls a document delivered by a decedent for safekeeping or who leases a safe deposit box to a decedent may permit any of the following persons to examine the document or the contents of the safe deposit box:

(1) the spouse of the decedent;

(2) a parent of the decedent;

(3) a descendant of the decedent who is at least 18 years old; or

(4) a person named as executor of the decedent's estate in a copy of a document that the person has and that appears to be a will of the decedent.

(b) The examination shall be conducted in the presence of the person who possesses or controls the document or who leases the safe deposit box or, if the person is a corporation, an officer of the corporation. (Title 122A, Art. 14.22 (part).)

Sec. 211.406. Delivery of Document Without Court Order

(a) A person who permits an examination of a decedent's document or safe deposit box under Section 211.405 of this code may deliver:

(1) a document appearing to be the decedent's will to the clerk of a court that has probate jurisdiction and that is located in the coun-

ty in which the decedent resided or to the person named in the document as an executor of the decedent's estate;

(2) a document appearing to be a deed to a burial plot in which the decedent is to be buried or appearing to give burial instructions to the person making the examination; or

(3) a document appearing to be an insurance policy on the decedent's life to a beneficiary named in the policy.

(b) A person who has leased a safe deposit box to the decedent shall keep a copy of a document appearing to be a will that the person delivers under Subsection (a) of this section. The person shall keep the copy for four years after the day of delivery.

(c) A person may not deliver a document under Subsection (a) of this section unless requested to do so by the person examining the document and unless the person examining the document issues a receipt for the document to the person who is to deliver it. (Title 122A, Art. 14.22 (part).)

Sec. 211.407. Restriction on Removal of Contents of Safe Deposit Box

A person may not remove the contents of a decedent's safe deposit box except as provided by Section 211.404 or 211.406 of this code or except as provided by another law. (Title 122A, Art. 14.22 (part).)

[Sections 211.408–211.450 reserved for expansion]

SUBCHAPTER J. ESTATE TAX BASED ON FEDERAL ESTATE TAX CREDIT

Sec. 211.451. Purpose

(a) The purpose of this subchapter is to impose a tax by which the state gains the full benefit of the federal estate tax credit established by Section 2011, Internal Revenue Code of 1954, as amended. The federal estate tax credit establishes a maximum amount by which the federal estate tax may be reduced by an estate, inheritance, legacy, or succession tax paid to the state.

(b) The tax imposed by this subchapter does not increase the total amount of taxes that are determined on a decedent's estate by this state's law and federal law. The result of the tax is to increase the tax on the decedent's estate that is paid to the state and to decrease by an equivalent amount the estate tax that is paid to the federal government. (Title 122A, Art. 14.12, Secs. (B) (part), (E); Art. 14.00A, Subd. (g).)

Sec. 211.452. Estate Tax Imposed

A tax is imposed on the value of a decedent's estate that is located in this state and that is subject to the federal estate tax. (Title 122A, Art. 14.12, Sec. (A) (part).)

Sec. 211.453. Amount of Tax

(a) The amount of the tax imposed by this subchapter is the amount that is the result of subtracting the amount of the inheritance tax imposed on the beneficiaries of a decedent's estate by Section 211.051 of this code from the maximum amount of the federal estate tax credit for state death taxes for the decedent's estate determined under Section 2011, Internal Revenue Code of 1954, as amended.

(b) If the amount that results from the subtraction is a negative amount or zero, no tax is due under this subchapter.

(c) If the amount of the tax imposed on the beneficiaries of a decedent's estate by Section 211.051 of this code is zero, the amount of the

tax imposed by this subchapter is determined under Subsection (a) of this section using the zero amount in the determination. (Title 122A, Art. 14.12, Secs. (A) (part), (B) (part), (C) (part).)

Sec. 211.454. Determining Tax if Estate is Partly in and Partly Outside State

(a) If a decedent's estate is located partly in and partly outside Texas, only part of the amount of the federal estate tax credit is to be used under Section 211.453(a) of this code in determining the tax imposed by this subchapter.

(b) The part of the federal estate tax credit to be used shall be in the same ratio to the maximum federal estate tax credit allowable as the value of the decedent's net estate located in Texas is to the value of the decedent's total net estate. (Title 122A, Art. 14.12, Sec. (D).)

Sec. 211.455. Payment of Tax Before Partition and Distribution

The tax determined under this subchapter on a decedent's estate shall be paid before the estate is partitioned and distributed to the beneficiaries of the estate. (Title 122A, Art. 14.12, Sec. (C) (part).)

[Sections 211.456–211.500 reserved for expansion]

SUBCHAPTER K. ENFORCEMENT

Sec. 211.501. Comptroller's Authority to Examine Books and Other Property

The comptroller may examine books, records, documents, or other property if the examination is necessary for the comptroller to enforce this chapter. (Title 122A, Art. 14.13, Sec. (B) (part).)

Sec. 211.502. Tax Lien

(a) A lien is imposed on a decedent's estate to secure the payment of the taxes determined under this chapter on the decedent's estate and to secure the payment of related penalties, interest, or costs imposed by this chapter.

(b) A part of a decedent's estate that is exempted or deductible from the estate before the tax imposed by this chapter is determined is not exempt from the lien.

(c) The lien is in force beginning on the day of the decedent's death. (Title 122A, Art. 14.18, Sec. (A) (part).)

Sec. 211.503. Duration of Lien

(a) The lien imposed by this chapter is in force for five years after the day of the decedent's death unless:

(1) the comptroller releases the lien on an earlier day; or

(2) a suit to collect a tax imposed by this chapter and to enforce the lien is filed before the expiration of the five-year period.

(b) The lien on a decedent's estate is not affected by the filing or the failure to file a probate proceeding on the estate.

(c) The limitation under Subsection (a) of this section does not apply if the return required by Section 211.353 of this code or a report required by Section 211.351 or 211.354 of this code is not filed as provided by those sections. (Title 122A, Art. 14.18, Secs. (A) (part), (D) (part).)

Sec. 211.504. Property Exempt From Lien

(a) In this section, "inventory of goods" includes tangible personal property that is normally sold in the operation of a business.

(b) The lien imposed by this chapter on a decedent's estate does not attach to:

(1) a business entity's inventory of goods that is part of the estate; or

(2) corporate stock that is issued by a corporation incorporated and existing under the laws of this state and that is part of the estate of a nonresident decedent.

(c) The lien attaches to the proceeds from the sale of a business entity's inventory of goods.

(d) A person may transfer corporate stock that is exempt under this section from the lien without obtaining the permission of the comptroller or the release of the lien by the comptroller. (Title 122A, Art. 14.18, Sec. (B); Art. 14.19, Sec. (C).)

Sec. 211.505. Suit to Enforce Lien

(a) The attorney general may bring suit in the name of the state to enforce the lien imposed by this chapter.

(b) Except as limited by Section 211.503 of this code, the lien may be enforced in a suit brought to collect a tax, penalty, interest, or cost imposed by this chapter.

(c) The lien may be enforced in any other manner provided by law. (Title 122A, Art. 14.13, Sec. (B) (part); Art. 14.18, Sec. (D).)

Sec. 211.506. Release of Lien After Tax is Paid

(a) If a tax determined under this chapter on a decedent's estate and any related penalty, interest, and cost imposed by this chapter are paid, the comptroller shall release the tax lien imposed by this chapter on the estate.

(b) The comptroller shall give notice of the release to the county clerk. (Title 122A, Art. 14.19, Sec. (A) (part).)

Sec. 211.507. Release of Lien Before Tax is Paid

(a) The comptroller, before a tax determined under this chapter on a decedent's estate is paid, may permit a transfer of property included in the estate and may release the lien imposed by this chapter on the property if:

(1) the transfer is necessary to pay the tax or to pay a federal estate tax or the transfer is necessary to preserve the estate;

(2) the transfer is made for adequate consideration; and

(3) the property remaining in the estate is sufficient to assure payment of the tax and a claim or lien that arises before the transfer or a surety guarantees the payment.

(b) The lien imposed by this chapter on a decedent's estate attaches to the proceeds of a transfer under Subsection (a) of this section. (Title 122A, Art. 14.19, Sec. (B).)

Sec. 211.508. Penalty Relating to Improper Transfer of Property

(a) A person is subject to a penalty if:

(1) the person transfers a decedent's asset in violation of Section 211.402(a) of this code; or

(2) the person does not permit the comptroller, while acting under Section 211.402(c) of this code, to examine a decedent's assets.

(b) The penalty shall be not less than $1,000 nor more than $5,000. (Title 122A, Art. 14.21 (part).)

Sec. 211.509. Penalty for Failure to File Report or Return

The comptroller shall assess a penalty of $10 to a person who is required to file a report or return under Section 211.351, 211.353, or 211.-

354 of this code and who does not file the report or return within the time provided by those sections. (Title 122A, Art. 14.14, Sec. (E).)

Sec. 211.510. Penalty for Failure to Pay Tax or for Late Payment

(a) A person who is liable for a tax imposed by this chapter and who does not pay the tax on or before the day the tax is due shall pay to the comptroller a penalty.

(b) The penalty is five percent of the amount of the tax that is delinquent.

(c) If the amount that is delinquent is not paid within 30 days after the due date, a penalty of an additional five percent of the delinquent amount is due.

(d) A penalty is not imposed by this section on a person who is liable for the tax if the person shows to the comptroller that the failure to pay the tax is due to a reasonable cause and not due to wilful neglect. (Title 122A, Art. 14.17 (part).)

Sec. 211.511. Interest on Delinquent Taxes

(a) A tax imposed by this chapter that is delinquent draws interest at the rate set by Section 111.060 of this code.

(b) The interest begins to accrue nine months after the day of the death of the decedent on whose estate the tax is determined.

(c) If the accrued interest is less than $5, it does not have to be paid. (Title 122A, Art. 14.17 (part).)

Sec. 211.512. Criminal Penalty for Failure to File Report

(a) A personal representative of a decedent's estate commits an offense if the representative does not file a return or report required by Section 211.353 or 211.354 of this code at the time required by those sections.

(b) A clerk of a court having probate jurisdiction commits an offense if the clerk does not file a report required by Section 211.351 of this code at the time required by that section.

(c) An offense under Subsection (a) of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000. An offense under Subsection (b) of this section is a misdemeanor punishable by a fine of not less than $50 nor more than $250.

(d) The venue for prosecution of an offense under this section is in the county in which the decedent's estate is administered or, if there is no administration or if the decedent is a nonresident of the state, in the county in which the principal part of the estate is located. (Title 122A, Art. 14.15.)

[Sections 211.513–211.550 reserved for expansion]

SUBCHAPTER L. DISPOSITION OF REVENUE

Sec. 211.551. General Revenue Fund

The revenue from a tax, interest, or penalty imposed by this chapter shall be deposited in the state treasury to the credit of the general revenue fund. (Title 122A, Art. 14.01, Sec. (A) (part); Art. 14.16, Sec. (C) (part).)

SUBTITLE K. POLL TAX

CHAPTER 251. POLL TAX

Section

251.001. Tax Imposed
251.002. Rate of Tax
251.003. Exemption
251.004. Collection of Tax
251.005. Time at Which Payment is Due
251.006. Payment of Tax
251.007. Tax Receipt
251.008. Reports and Remittances
251.009. County Poll Tax Prohibited
251.010. County Fee for Collecting Tax
251.011. Fee for Assessor and Collector
251.012. Disposition of Revenue

SUBTITLE K. POLL TAX

CHAPTER 251. POLL TAX

Sec. 251.001. Tax Imposed

A tax is imposed each year on every individual who on January 1 is a resident of this state and is at least 21 years old but under 60. (Title 122A, Art. 2.01 (part).)

Sec. 251.002. Rate of Tax

The rate of the tax imposed by this chapter is $1.50. (Title 122A, Art. 2.01 (part).)

Sec. 251.003. Exemption

The following individuals are exempt from the 50-cent portion of the tax imposed by this chapter that is to be deposited to the credit of the general revenue fund:

(1) an individual who is insane or blind;

(2) an individual who has lost a hand or foot;

(3) an individual who is permanently disabled;

(4) a veteran of a foreign war who is at least 40 percent disabled; and

(5) a member of the state military forces who is given an exemption under Article 5783, Revised Civil Statutes of Texas, 1925. (Title 122A, Art. 2.01 (part).)

Sec. 251.004. Collection of Tax

The assessor and collector of taxes for a county shall collect and account each year for the tax imposed by this chapter. (Title 122A, Art. 2.01 (part).)

Sec. 251.005. Time at Which Payment is Due

An individual on whom a tax is imposed by this chapter shall pay the tax after September 30 of the year in which the tax is imposed and before February 1 of the next year. (Title 122A, Art. 2.01 (part).)

Sec. 251.006. Payment of Tax

An individual on whom a tax is imposed by this chapter shall pay the tax to the assessor and collector of taxes for the county in which the individual resides at the time of payment. (Title 122A, Art. 2.01 (part).)

Sec. 251.007. Tax Receipt

An individual who pays the tax imposed by this chapter is entitled to a tax receipt for the payment. The individual is entitled to the receipt even if other taxes imposed on the individual are unpaid. (Title 122A, Art. 2.01 (part).)

Sec. 251.008. Reports and Remittances

(a) The comptroller shall adopt rules prescribing methods of accounting for and remitting to the state the tax imposed by this chapter and shall prescribe and furnish forms for periodic reports.

(b) An assessor and collector of taxes for a county shall file with the comptroller, at the times and in the manner required by the rules, sworn reports accounting for the tax, collected or delinquent.

(c) The assessor and collector shall remit to the state the tax he collects at the times and in the manner required by the rules. (R.C.S. Art. 7260.)

Sec. 251.009. County Poll Tax Prohibited

A county may not impose a poll tax. (Title 122A, Art. 2.01 (part).)

Sec. 251.010. County Fee for Collecting Tax

(a) A county may impose a fee of not more than 25 cents on each individual on whom a tax is imposed by this chapter. The fee is for the county's services in collecting the tax imposed by this chapter. The fee shall be paid to the assessor and collector of taxes for the county at the time the tax imposed by this chapter is paid.

(b) The fees collected under this section shall be deposited in the county treasury to the credit of the general fund of the county. The fees are not fees of office and may not be kept by the assessor and collector regardless of whether the assessor and collector is compensated on a fee or salary basis. (Title 122A, Art. 2.01 (part).)

Sec. 251.011. Fee for Assessor and Collector

(a) An assessor and collector of taxes for a county is entitled to a fee of 15 cents for each tax receipt that the assessor and collector issues under this chapter and for each certificate of exemption that the assessor and collector issues exempting an individual from a part of the tax imposed by this chapter.

(b) The state and the county in which the assessor and collector holds office shall pay a pro rata share of the fee to the assessor and collector based on the ratio between the amount of the tax imposed by this chapter that the state receives and the amount of the fee that the county receives for its services in collecting the tax. However, if the assessor and collector is compensated on a salary basis, the payment required by this section shall be deposited in the officers salary fund of the county.

(c) Any payment to an assessor and collector under this section is the assessor and collector's total compensation for duties performed under the Texas Election Code. (V.T.E.C. Art. 7.10.)

Sec. 251.012. Disposition of Revenue

Two-thirds of the revenue from the tax imposed by this chapter shall be deposited in the available school fund and one-third shall be deposited to the credit of the general revenue fund. (Title 122A, Art. 2.01 (part).)

Conforming amendment

Sec. 2. Chapter 16, Texas Education Code, as amended, is amended by adding [97] Sections 16.257 and 16.258 to read as follows:

Sec. 16.257. Foundation School Budget Committee; Duties

(a) The foundation school budget committee consists of the commissioner of education, the state auditor, and the comptroller of public accounts.

(b) On or before November 1 of each even-numbered year, the foundation school budget committee shall determine and certify to the comptroller of public accounts an amount of money to be transferred from the tax clearance fund to the foundation school fund for the following biennium for the purpose of financing the foundation school program as prescribed by this code.

(c) The budget committee, during the biennium, may alter the estimate made under Subsection (b) of this section to reflect more accurately the amounts needed for financing the foundation school program.

Sec. 16.258. Other Credits to the Foundation School Fund

In addition to the amounts of money transferred under Chapter 131, Tax Code, to the foundation school fund, there shall be credited to the foundation school fund all money received from the United States or other agency as reimbursement for expenditures already incurred in supplementing the salaries of vocational and special service public school personnel. This section does not affect the allocation of funds for vocational education as provided by this code. (V.A.C.S. Art. 7083a, Sec. 2, Subsec. (4-a) (part).)

Conforming amendment

Sec. 3. Title 116, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding [98] Article 6673—1 to read as follows:

Art. 6673—1. Farm-to-market roads

(a) The farm-to-market road fund is established for financing the construction of farm-to-market roads by the State Department of Highways and Public Transportation.

(b) The State Department of Highways and Public Transportation shall use the money transferred to the farm-to-market road fund under Chapter 131, Tax Code, and other funds made available to the department for such purposes so that not less than $23 million each year is used for the construction of additional miles of newly designed farm-to-market roads, meaning roads in rural areas, including feeder roads, secondary roads, school bus routes, rural mail routes, milk routes, and others, which roads and routes are not a part of the designated state highway system or the designated primary federal aid highway system.

(c) The farm-to-market road fund shall be used for a system of roads selected by the State Department of Highways and Public Transportation after consultation with the commissioners courts of the counties of the state relative to the most needed unimproved rural roads in the counties. The selections shall be made in a manner to insure equitable and judicious distribution of funds and work among the several counties of the state.

97. V.T.C.A.Education Code, §§ 16.257, 16.258.

98. Vernon's Ann.Civ.St. art. 6673—1.

(d) The general characteristics of the roads to be selected are as follows:

(1) the roads shall not be potential additions to the federal aid primary highway system;

(2) the roads shall serve rural areas primarily and shall connect farms, ranches, rural homes, and sources of natural resources such as oil, mines, timber, etc., and water loading points, schools, churches, and points of public congregation, including community developments and villages;

(3) the roads shall be capable of assisting in the creation of economic values in the areas served;

(4) the roads shall preferably serve as public school bus routes, or rural free delivery postal routes, or both; and

(5) the roads shall be capable of early integration with the previously improved Texas road system, and at least one end should connect with a road already or soon to be improved on the state system of roads. (V.A.C.S. Art. 7083a, Sec. 2, Subsec. (4-b) (part).)

Conforming amendment

Sec. 4. Chapter 4, Insurance Code, as amended, is amended by adding [99] Article 4.12 to read as follows:

Art. 4.12. Disposition of Certain Revenue

All revenue received from the collection of the taxes imposed by Articles 4.10 and 4.11 of this code and Article 4769, Revised Civil Statutes of Texas, 1925, as amended, after the deduction of the portion of the revenue provided for enforcement purposes, shall be allocated one-fourth to the Available School Fund and three-fourths to the tax clearance fund. (V.A.C.S. Art. 7083a, Sec. 2 (part).)

Conforming amendment

Sec. 5. Chapter 31, Human Resources Code, is amended by adding [1] Section 31.043 to read as follows:

Sec. 31.043. Transfer of Property to Qualify for Assistance

Funds appropriated for aid on behalf of needy children may not be used for assistance to or on behalf of persons who transfer property for the purpose of qualifying or increasing the need for assistance if the property transferred, were it still available, would affect either the eligibility for or the amount of the assistance payments. This section does not apply to payments required by federal law or by regulations of the United States Department of Health and Human Services. (V.A.C.S. Art. 7083a, Sec. 2, Subsec. (4) (part).)

Conforming amendment

Sec. 6. Subsection C, Section 1, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), is amended [2] to read as follows:

C. Limited Sales, Excise, and Use Tax Act. "Limited Sales, Excise, and Use Tax Act" means Chapter 151, Tax Code, as amended before or after the effective date of this Act.

99. V.A.T.S. Insurance Code, art. 4.12.
1. V.T.C.A. Human Resources Code, § 31.043.
2. Vernon's Ann.Civ.St. art. 1066c, § 1, subsec. C.

Conforming amendment

Sec. 7. Subsections A and C, Section 4, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), are amended [3] to read as follows:

A. Except as provided in Subsection D of this Section, in every city where the local sales and use tax has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such city of tangible personal property purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption in such city at the rate of one percent (1%) of the sales price of the property or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subsection E of this Section, the local use tax is not owed to and may not be collected by, for, or in behalf of a city if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the State under the Limited Sales, Excise, and Use Tax Act or if the tangible personal property is first stored, used, or consumed within a city or area that has not adopted the local sales or use tax.

C. The provisions of the Limited Sales, Excise, and Use Tax Act relating to the administration and collection of the storage and use tax portion of the state tax is applicable to the collection of the tax imposed by this Section, provided that in Subchapter D of Chapter 151, Tax Code, the name of the city where the local sales and use tax has been adopted shall be substituted for that of the State where the words "this State" are used to designate the taxing authority or to delimit the tax imposed.

Conforming amendment

Sec. 8. Subsection A, Section 6, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended [4] to read as follows:

A. All applicable provisions contained in Subtitles A and B and Chapter 151 of Title 2, Tax Code, shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

Conforming amendment

Sec. 9. Subdivision (3), Subsection B, Section 6, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), is amended [5] to read as follows:

(3) For the purpose of determining the proper local use tax imposed by this Act, a holder of a direct payment permit issued by the Comptroller under the Limited Sales, Excise, and Use Tax Act who becomes liable for local use tax by reason of storage, use, or other consumption of taxable items purchased in this State under a direct payment exemption certificate, shall allocate the tax to the city in which the taxable item was first removed from the permit holder's storage, or if not stored, the place at which the items are first used or consumed by the permit holder after transportation. As used in this paragraph, storage, use, or other con-

3. Vernon's Ann.Civ.St. art. 1066c, § 4, subsecs. A, C.
4. Vernon's Ann.Civ.St. art. 1066c, § 6, subsec. A.
5. Vernon's Ann.Civ.St. art. 1066c, § 6, subsec. B, subd. (3).

sumption may not include a temporary delay or interruption necessary and incident to the transportation or further fabrication, processing, or assembling of taxable items within this State for delivery to the permit holder. A charge for processing, fabrication, or further assembly in a city that has adopted the local use tax shall be subject to the local use tax. If a taxable item is first stored, used, or consumed within a city that has not adopted the tax imposed by this Act or outside of a city, no local use tax is due.

Conforming amendment

Sec. 10. Subdivision (1), Subsection C, Section 6, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended [6] to read as follows:

(1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items taxable under the provisions of Subchapter H, Limited Sales, Excise, and Use Tax Act, are hereby made applicable to the imposition and collection of the tax imposed by this Act, except as specifically provided in Section 151.317(b) of that Act.

Conforming amendment

Sec. 11. Subsections D and F, Section 6, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), are amended [7] to read as follows:

D. The same sales tax permit, exemption certificate, and resale certificate required by the Limited Sales, Excise, and Use Tax Act for the administration and collection of the State Limited Sales, Excise, and Use Tax shall satisfy the requirements of this Act, and no additional permit or exemption certificate or resale certificate shall be required; except that the Comptroller may prescribe a form of exemption certificate for an exemption from the tax imposed by this Act as a result of a prior contract under Subsection C of this Section.

F. The penalties provided in the Limited Sales, Excise, and Use Tax Act for violations of that Act are hereby made applicable to violations of this Act.

Conforming amendment

Sec. 12. Subsection A, Section 12, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended [8] to read as follows:

A. In any city where the Local Sales and Use Tax has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided in the Limited Sales, Excise, and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the Comptroller shall notify the Tax Collector of the city to which delinquent taxes are due under this Act by United States Registered Mail or

6. Vernon's Ann.Civ.St. art. 1066c, § 6, subsec. C, subd. (1).
7. Vernon's Ann.Civ.St. art. 1066c, § 6, subsecs. D, F.
8. Vernon's Ann.Civ.St. art. 1066c, § 12, subsec. A.

Certified Mail and shall send a copy of the notice to the Attorney General. The city, acting through its attorney, may join in any suit brought by the Attorney General as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such city. The notice sent by the Comptroller to the tax collector of the city showing the delinquency of a taxpayer for the local sales and use tax constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of local sales and use tax set forth in the notice.

Conforming amendment

Sec. 13. Subdivisions (2) and (5), Subsection C, Section 12, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), are amended [9] to read as follows:

(2) The Comptroller or Attorney General may disapprove the institution of tax suit by a city if:

(i) negotiations between the State and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the State and the city seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the State and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the State will bring suit against the taxpayer for the collection of all sales, excise, and use taxes due under the Limited Sales, Excise, and Use Tax Act and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of State law or a provision of the Texas or United States Constitution in which the State has an overriding interest.

(5) A copy of the final judgment in favor of a city in a case in which the State is not a party shall be abstracted by the city and a copy of the judgment together with a copy of the abstract shall be sent to the Comptroller. The city shall collect the taxes awarded to it under the judgment as provided by Section 151.608(e), Limited Sales, Excise, and Use Tax Act, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by a city on a judgment, notice of the amount collected shall be sent by certified mail to the Comptroller. The Comptroller may prescribe a form for the notice to be used by cities.

Conforming amendment

Sec. 14. Subparagraphs (1) and (3), Paragraph (c), Subsection (B), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), are amended [10] to read as follows:

(1) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use or other consumption within such authority area of taxable items purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use or other consumption in such authority area at the same rate as the sales tax levied under this Act of the

9. Vernon's Ann.Civ.St. art. 1066c, § 12, subsec. C, subds. (2), (5).

10. Vernon's Ann.Civ.St. art. 1118x, § 11B, subsec. B, par. (c), subpars. (1), (3).

sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subparagraph (4) of this paragraph, the use tax imposed by this section is not owed to and may not be collected by, for, or in behalf of an authority if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act or if the tangible personal property is first stored, used, or consumed within an authority or area that has not adopted the sales and use tax imposed by this section.

(3) The provisions of the Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this paragraph (c), provided that in Subchapter D of Chapter 151, Tax Code, the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed.

Conforming amendment

Sec. 15. Paragraph (e), Subsection (B), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), is amended [11] to read as follows:

(e) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(1) All applicable provisions contained in Title 2, Tax Code, shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(2) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition and collection of the tax imposed by this Act except as modified herein.

(3) The penalties provided in Title 2, Tax Code, for violation of that title, are hereby made applicable to violations of this Act.

(4) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

Conforming amendment

Sec. 16. Subparagraphs (1) and (7), Paragraph (h), Subsection (B), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), are amended [12] to read as follows:

(1) In any authority where the sales and use tax authorized by this Act has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided by the Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority to which delinquent taxes are due under this Act by United States registered mail or certified mail and shall send a copy of the notice to the attorney general. The authority, acting through its attorney, may join in any suit

11. Vernon's Ann.Civ.St. art. 1118x, § 11B, subsec. B, par. (e).

12. Vernon's Ann.Civ.St. art. 1118x, § 11B, subsec. B, par. (h), subpars. (1), (7).

brought by the attorney general as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of sales and use tax set forth in the notice.

(7) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the comptroller. The authority shall collect taxes awarded to it under the judgment as provided by Section 151.608(e), Limited Sales, Excise and Use Tax Act, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by an authority on a judgment, notice of the amount collected shall be sent by certified mail to the comptroller. The comptroller may prescribe a form for the notice to be used by authorities.

Conforming amendment

Sec. 17. Subparagraph (C), Paragraph (2), Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended [13] to read as follows:

(C) The provisions of the Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this Subdivision (2), provided that in Subchapter D, Chapter 151, Tax Code, the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed.

Conforming amendment

Sec. 18. Paragraph (4), Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended [14] to read as follows:

(4) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(A) All applicable provisions contained in Title 2, Tax Code, shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(B) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition, and collection of the tax imposed by this Act, except as modified herein.

(C) The penalties provided in Title 2, Tax Code, for violations of that Act are hereby made applicable to violations of this Act.

(D) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for, and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

13. Vernon's Ann.Civ.St. art. 1118y, § 16, subsec. (f), par. (2), subpar. (C).

14. Vernon's Ann.Civ.St. art. 1118y, § 16, subsec. (f), par. (4).

Conforming amendment

Sec. 19. Subparagraphs (A) and (G), Paragraph (7), Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), are amended [15] to read as follows:

(A) In an authority where the sales and use tax authorized by this Act has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided by the Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority to which delinquent taxes are due under this Act by United States registered mail or certified mail and shall send a copy of the notice to the attorney general. The authority, acting through its attorney, may join in any suit brought by the attorney general as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of sales and use tax set forth in the notice.

(G) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the comptroller. The authority shall collect taxes awarded to it under the judgment as provided by Section 151.608(e), Limited Sales, Excise and Use Tax Act and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by an authority on a judgment, notice of the amount collected shall be sent by certified mail to the comptroller. The comptroller may prescribe a form for the notice to be used by an authority.

Conforming amendment

Sec. 20. Article 5764, Revised Civil Statutes of Texas, 1925, is amended [16] to read as follows:

Art. 5764. Fees

Each association organized hereunder shall pay to the Commissioner an annual license fee of ten dollars but shall be exempt from all franchise or license taxes. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. For filing articles of incorporation, an association organized hereunder shall pay ten dollars, and for filing an amendment thereto, two dollars and fifty cents.

Conforming amendment

Sec. 21. Article 1407, Revised Civil Statutes of Texas, 1925, is amended [17] to read as follows:

Art. 1407. Lodges: Tax

Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. However, an incorporated body is ex-

15. Vernon's Ann.Civ.St. art. 1118y, § 16, subsec. (f), par. (7), subpars. (A), (G).
16. Vernon's Ann.Civ.St. art. 5764.
17. Vernon's Ann.Civ.St. art. 1407.

empt from the franchise tax imposed by Chapter 171, Tax Code, only if the body is exempted by that chapter.

Conforming amendment

Sec. 22. Article 2518, Revised Civil Statutes of Texas, 1925, is amended [18] to read as follows:

Art. 2518. Statement to be made

Corporations chartered hereunder shall be purely co-operative, and not for profit, and shall not be required to pay any annual franchise tax. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter. Corporations shall nevertheless make a statement of their assets and liabilities to the Secretary of State, showing the condition of their affairs, in such form as the Attorney General may prepare for the Secretary of State. Such societies may, by their directors, in accordance with their by-laws pass their profits to the surplus fund or divide the same among the members of the society in proportion to their respective contributions in cash to the working capital of the corporation and patronage of their members.

Conforming amendment

Sec. 23. Section 21, Chapter 835, Acts of the 66th Legislature, 1979 (Article 1269*l*—7, Vernon's Texas Civil Statutes), is amended [19] to read as follows:

Exemption from taxation

Sec. 21. It is hereby determined that the creation of the corporation is in all respects for the benefit of the people of the state, for the improvement of their health and welfare, and for the promotion of the economy, and that said purposes are public purposes and the corporation, being a public instrumentality and nonprofit corporation, will be performing an essential governmental function on behalf of and for the benefit of the general public, the local governmental unit, and the state. Accordingly, the corporation and all properties at any time owned by it and the income therefrom and all bonds issued by it, and their transfer, and the income therefrom shall be exempt from the franchise tax, license and recording fees, and all other taxes imposed by the State of Texas or any political subdivision thereof as public property used for public purposes. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Conforming amendment

Sec. 24. Section 6, Chapter 56, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 4437f—1, Vernon's Texas Civil Statutes), is amended [20] to read as follows:

Sec. 6. Associations established under this Act shall be purely co-operative and not for profit, and shall not be required to pay any annual franchise tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by

18. Vernon's Ann.Civ.St. art. 2518.
19. Vernon's Ann.Civ.St. art. 1269*l*—7, § 21.
20. Vernon's Ann.Civ.St. art. 4437f—1, § 6.

that chapter. Associations shall nevertheless file a written report to the Secretary of State showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from the laundry system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

Conforming amendment

Sec. 25. Section 32, Chapter 700, Acts of the 66th Legislature, 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended [21] to read a follows:

Sec. 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. Accordingly, the corporation, all properties at any time owned by it, the income therefrom, and all bonds issued by it, their transfer, and the income therefrom shall be exempt from all taxation by the state. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Conforming amendment

Sec. 26. Section 6, Chapter 195, Acts of the 64th Legislature, 1975, as amended (Article 4447r, Vernon's Texas Civil Statutes), is amended [22] to read as follows:

Sec. 6. The associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. Associations shall nevertheless file a written report to the secretary of state showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from each system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

Conforming amendment

Sec. 27. Section 44, Cooperative Association Act (Article 1396—50.-01, Vernon's Texas Civil Statutes), is amended [23] to read as follows:

Exemption from taxes

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

21. Vernon's Ann.Civ.St. art. 5190.6, § 32.
22. Vernon's Ann.Civ.St. art. 4447r, § 6.
23. Vernon's Ann.Civ.St. art. 1396—50.01, § 44.

Conforming amendment

Sec. 28. Article 2512, Revised Civil Statutes of Texas, 1925, is amended [24] to read as follows:

Art. 2512. Fees and reports

Each such association, except those having a capital stock, shall pay an annual license fee of ten dollars, and all such associations shall be exempt from all franchise or other license tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. On or before the tenth days of January, April, July and October, those having a capital stock shall file with the Secretary of State with a fee of two dollars and fifty cents, accurate reports showing their financial condition and the amount of outstanding paid up capital stock as of the first of January, April, July and October.

Conforming amendment

Sec. 29. Section 2.10, Texas Credit Union Act, as amended (Article 2461—1.01 et seq., Vernon's Texas Civil Statutes), is amended [25] to read as follows:

Sec. 2.10. Exemption from certain taxes

Each credit union organized under this Act is exempt from all franchise and other license taxes. However, a credit union is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the credit union is exempted by that chapter. The intangible property of a credit union organized under this Act is not taxable by the state or any of its political subdivisions.

Conforming amendment

Sec. 30. Section 30, Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes), is amended [26] to read as follows:

Exemption from excise taxes—license fee

Sec. 30. Corporations formed hereunder shall pay annually, on or before May first, to the Secretary of State, a license fee of Ten Dollars ($10) and such corporations shall be exempt from all other excise taxes of whatsoever kind or nature. However, the corporations are exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporations are exempted by that chapter.

Conforming amendment

Sec. 31. Section 29, Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes), is amended [27] to read as follows:

Exemption from excise taxes. License fee

Sec. 29. Each corporation doing business in this State pursuant to this Act shall pay annually on or before the first day of July to the Secretary of State a fee of Ten Dollars ($10), but shall be exempt from all other excise taxes. However, a corporation is exempt from the franchise tax

24. Vernon's Ann.Civ.St. art. 2512.
25. Vernon's Ann.Civ.St. art. 2461—2.10.
26. Vernon's Ann.Civ.St. art. 1528b, § 30.
27. Vernon's Ann.Civ.St. art. 1528c, § 29.

imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Conforming amendment

Sec. 32. Sections 11.61(c) and 61.712, Alcoholic Beverage Code, as amended, are amended [28] to read as follows:

(c) The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a permit if the commission or administrator finds that the permittee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

Sec. 61.712. Grounds for Cancellation or Suspension: Sales Tax

The commission or administrator may refuse to renew or, after notice and hearing, suspend for not more than 60 days or cancel a license if the commission or administrator finds that the licensee:

(1) no longer holds a sales tax permit, if required, for the place of business covered by the license; or

(2) is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 151, Tax Code), or is shown on the records of the comptroller of public accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

Conforming amendment

Sec. 33. Articles 13.01 through 13.17, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, are transferred [29] to Title 132, Revised Civil Statutes of Texas, 1925, as amended, and are designated respectively as Articles 8801 through 8817 of Chapter 8 of that title that is entitled "Coin-Operated Machine Services."

Conforming amendment

Sec. 34. Article 8814, Revised Civil Statutes of Texas, 1925, as amended, as transferred by this Act (formerly Article 13.14, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), is amended [30] to read as follows:

Art. 8814. 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 Chapter 131, Tax Code. Provided that all counties and cities within this State may levy an occupation tax on coin-operated ma-

28. V.T.C.A. Alcoholic Beverage Code, §§ 11.61(c), 61.712.

29. Vernon's Ann.Civ.St. arts. 8801 to 8817.

30. Vernon's Ann.Civ.St. art. 8814.

chines in this State in an amount not to exceed one-half (½) of the State tax levied herein. Further provided that all political subdivisions of this State shall, for zoning purposes, treat the exhibition of a music and skill or pleasure coin-operated machine as indistinguishable from the principal use to which the property where exhibited is devoted. This does not prohibit cities from restricting the exhibition of coin-operated amusement machines within three hundred (300) feet of a church, school, or hospital.

Conforming amendment

Sec. 35. The Texas Unemployment Compensation Act, as amended Article 5221b—1 et seq., Vernon's Texas Civil Statutes), is amended by adding [31] Section 14-A to read as follows:

Sec. 14-A. Liens

All sums due by any employing unit to the Commission under this Act shall become a lien on all the property both real and personal belonging to such employing unit or to any individual so indebted. The lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent. The provisions of Subchapters A and B of Chapter 113, Tax Code, govern the enforcement of this lien. The Commission has all the duties imposed, and the power and authority in administering and enforcing the lien created by this section that is conferred on the Comptroller for the enforcement of other liens under Subchapters A and B of Chapter 113, Tax Code. This lien is cumulative of the other lien provided in this Act and that lien is effective according to its terms.

Conforming amendment

Sec. 36. Articles 7064 and 7064a, Revised Civil Statutes of Texas, 1925, as amended, are transferred to the Insurance Code as Articles 4.10 and 4.11 and amended [32] to read as follows:

Art. 4.10. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums

Sec. 1. Every insurance corporation, Lloyd's or reciprocals, and any other organization or concern transacting the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance business, other than the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, written by a life insurance company, life and accident insurance company or health and accident insurance company, or for mutual benefit or protection in this State and other than fraternal benefit associations or societies in this State, and other than non-profit group hospital service plans, at the time of filing its annual statement, shall report to the State Board of Insurance the gross amount of premiums received upon property located in this State or on risks located in this State during the preceding year, and each of such insurance carriers shall pay an annual tax upon such gross premium receipts of 3.-85%, provided that any such insurance carriers doing two (2) or more kinds of insurance businesses herein referred to shall pay the tax herein levied upon its gross premiums received from each of said kinds of busi-

31. Vernon's Ann.Civ.St. art. 5221b—12A. 32. V.A.T.S. Insurance Code, arts. 4.10, 4.11.

ness; and the gross premium receipts where referred to in this law shall be the total gross amount of premiums received on each and every kind of insurance or risk written, except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders, but there shall be no deduction for premiums paid for reinsurance.

Sec. 2. The gross premium receipts, as above defined, shall be reported and shown as the premium receipts in the report to the State Board of Insurance by the insurance carriers, upon the sworn statements of two (2) principal officers of such carriers. Upon receipt by the Board of the sworn statements, showing the gross premium receipts by such insurance carriers, the Board shall certify to the State Treasurer the amount of taxes due by each insurance carrier which tax shall be paid to the State Treasurer on or before the first day of March following, and the Treasurer shall issue his receipt to such carrier, which shall be evidence of the payment of such taxes. No such insurance carrier shall receive a permit to do business in this State until all such taxes are paid.

Sec. 3. Each such insurance organization shall also report to the State Board of Insurance on or before the first day of March of each year, the amount that it had invested on the 31st of December, preceding, in Texas securities as defined herein and the amount that it had invested on said date in similar securities in the State in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments in such other State, it shall include as a part thereof that percentage of its investments in bonds of the United States of America purchased between December 8, 1941, and the termination of World War II that its reserves for unearned premiums and loss reserves, as required in such other state, are of its total reserves. If the report of such insurance organization as of December 31st preceding, shows that such organization had invested in Texas securities, as herein defined, an amount which is not less than seventy-five per cent (75%) nor more than eighty per cent (80%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 3.025% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty per cent (80%) and not more than eighty-five percent (85%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.75% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-five per cent (85%) and not more than eighty-eight per cent (88%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.2% of its gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-eight per cent (88%) and not more than ninety percent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be 1.65% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the State in which it then had

the highest percentage of its admitted assets invested, its tax shall be 1.-1% of such gross premium receipts. Provided, further, that the amount of all examination and valuation fees paid in each taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year.

Sec. 4. For the purposes of this Article, Texas securities are defined as real estate in this State; bonds of the State of Texas; bonds or interest bearing warrants of any county, city, town, school district or any municipality or subdivision thereof which is now or may hereafter be constituted or organized and authorized to issue bonds or warrants under the Constitution and laws of this State; notes or bonds secured by mortgage or trust deed on property in this State insured by the Federal Housing Administrator; the cash deposits in regularly established national or state banks or trust companies in this State on the basis of average monthly balances throughout the calendar year; that percentage of such insurance company's investments in the bonds of the United States of America, that its Texas reserves for the unearned premiums and loss reserves as may be required by the State Board of Insurance, are of its total reserves; but this provision shall apply only to United States Government bonds purchased between December 8, 1941, and the termination of World War II; in any other property in this State in which by law such insurance carriers may invest their funds.

Sec. 5. No occupation tax shall be levied on insurance companies herein subjected to the gross premium receipt tax by any county, city or town. All mutual fraternal benevolent associations now or hereafter doing business in this State under the lodge system and representative form of government, whether organized under the laws of this State or a foreign state or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes collectible under the laws of this State against any such insurance carriers except maintenance taxes specially levied under the laws of this State and assessed by the State Board of Insurance to support the various activities of the divisions of the Board, and except if any such carrier is writing personal accident or health and accident insurance other than workers' compensation, it shall be taxed as otherwise provided by law on account of such business; and except unemployment compensation taxes levied under Chapter 482, Acts of the 44th Legislature, 3rd Called Session, 1936, as amended (Article 5221b—1 et seq., Vernon's Texas Civil Statutes). No other tax shall be levied or collected from any insurance carrier by the state, county, city or any town, but this law shall not be construed to prohibit the levy and collection of state, county and municipal taxes upon the real and personal property of such carrier. Purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from the provisions of this law.

Art. 4.11. Tax on Domestic Life, Accident and Health Insurance Organizations

Sec. 1. Every group of individuals, society, association, group hospital service plan, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Article) organized under the laws of this State and transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit or otherwise, or for mutual benefit, or

protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31st, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first-year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one (1) occupation, shall pay an annual tax of 1.1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the State Board of Insurance on or before the first day of March of each year the amount that it had invested on the 31st day of December, preceding, in Texas securities as defined by Article 3.34, Texas Insurance Code, as amended; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred and Fifty Thousand Dollars ($450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of 55/80 of 1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first-year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first-year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy, and provided further that the amount of all examination and valuation fees paid in such taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year.

Sec. 2. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. Such gross premium receipts so reported shall not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. If any such insurance organization does more than one (1) kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Sec. 3. Upon receipt by it of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the 15th day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December

31st, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State.

Sec. 4. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, organized under the laws of this State, except, and only except unemployment compensation taxes levied under Chapter 482, Acts of the 44th Legislature, 3rd Called Session, 1936, as amended (Article 5221b—1 et seq., Vernon's Texas Civil Statutes); and the fees provided for under Article 4.07, Texas Insurance Code, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workers' compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

Conforming amendment

Sec. 37. (a) Articles 7074, 7075, and 7077, Revised Civil Statutes of Texas, 1925, are transferred [33] to Chapter 4, Insurance Code, and may be cited respectively as Articles 4.13, 4.14, and 4.15, Insurance Code.

(b) Article 4.02, Insurance Code, is amended [34] to read as follows:

Art. 4.02. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums

Sec. 1. Each such insurance organization shall be subject to the provisions of Articles 4.13, 4.14, and 4.15 of this code.

(c) Subsection (b), Section 33, Chapter 214, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 20A.33, Vernon's Texas Insurance Code), is amended [35] to read as follows:

(b) Each such health maintenance organization shall be subject to the provisions of Articles 4.13, 4.14, and 4.15, Insurance Code, as amended.

Transfer amendment

Sec. 38. (a) Articles 7055 and 7056, Revised Civil Statutes of Texas, 1925, are transferred [36] to Chapter 16, Title 83, Revised Civil Statutes of Texas, 1925, as amended, and may be cited respectively as Article 5221h and Article 5221i, Revised Civil Statutes of Texas, 1925.

(b) Chapter 464, Acts of the 51st Legislature, Regular Session, 1949 (Article 7048a, Vernon's Texas Civil Statutes), is designated [37] and may be cited as Article 2353b, Revised Civil Statutes of Texas, 1925.

(c) Chapter 84, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 7048b, Vernon's Texas Civil Statutes), is designated [38] and may be cited as Article 2353c, Revised Civil Statutes of Texas, 1925.

(d) Chapter 408, Acts of the 45th Legislature, Regular Session, 1937 (Article 7155a, Vernon's Texas Civil Statutes), is designated [39] and may be cited as Article 2353d, Revised Civil Statutes of Texas, 1925.

33. V.A.T.S. Insurance Code, arts. 4.13 to 4.15.
34. V.A.T.S. Insurance Code, art. 4.02.
35. V.A.T.S. Insurance Code, art. 20A.33, subsec. (b).
36. Vernon's Ann.Civ.St. arts. 5221h, 5221i.
37. Vernon's Ann.Civ.St. art. 2353b.
38. Vernon's Ann.Civ.St. art. 2353c.
39. Vernon's Ann.Civ.St. art. 2353d.

Conforming amendment

Sec. 38A. Section 322, Texas Probate Code, as amended, is amended [40] to read as follows:

Sec. 322. Classification of Claims Against Estates of Decedent

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed Five Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens, including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. Claims for taxes, penalties, and interest due under Title 2, Tax Code; Chapter 8, Title 132, Revised Civil Statutes of Texas, 1925, as amended; Section 81.111, Natural Resources Code; the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes); Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes); or Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

Class 5. All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 6. All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

Repealer

Sec. 39. (a) Except as provided by Subsection (d) of this section, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and all laws compiled in Volume 20A, Vernon's Texas Civil Statutes, are repealed.[41]

(b) Except as provided by Subsections (c) and (d) of this section, Title 122, Revised Civil Statutes of Texas, 1925, as amended, and all laws compiled in Volume 20, Vernon's Texas Civil Statutes, are repealed.[42]

(c) The following are not repealed by this Act:

(1) Article 7057g, Vernon's Texas Civil Statutes (Chapter 586, Acts of the 65th Legislature, Regular Session, 1977, as amended); [43]

(2) Article 7057h, Vernon's Texas Civil Statutes (Sections 1 and 2, Chapter 362, Acts of the 66th Legislature, Regular Session, 1979); [44]

40. V.A.T.S. Probate Code, § 322.
41. V.A.T.S. Tax.-Gen. arts. 1.01 to 1.13, 1.14, 1.15, 2.01, 3.01 to 3.12, 4.01 to 4.14, 5.01 to 5.03, 6.01 to 6.09, 7.01 to 7.41, 8.01 to 8.32, 9.001 to 9.021, 9.101 to 9.120, 9.201 to 9.224, 9.301 to 9.313, 11.02 to 11.04, 11.06 to 11.11, 12.01 to 12.22, 14.00A to 14.22, 18.01 to 18.04, 19.01 to 19.04, 20.01 to 20.09, 20.11 to 20.17, 22.01 to 22.09, 23.01 to 23.07, 24.01, repealed.
42. Vernon's Ann.Civ.St. arts. 7041a, 7047a, 7047a—20, 7047c, 7047c—3, 7047k—1, 7047n, 7048, 7049 to 7054, 7057b, 7057f, 7060½, 7060b, 7064½, 7064a—1, 7066c, 7067a, 7070a, 7073, 7076a, 7079 to 7083a.2, 7084b, 7098b, 7155a, 7260, 7359a, repealed.
43. Vernon's Ann.Civ.St. art. 7057g note.
44. Vernon's Ann.Civ.St. art. 7057h note.

(3) Article 7150.1, Revised Civil Statutes of Texas, 1925;[45]

(4) Article 7150o, Vernon's Texas Civil Statutes (Section 3, Chapter 153, Acts of the 66th Legislature, Regular Session, 1979);[46]

(5) Article 7244b, Vernon's Texas Civil Statutes (Chapter 391, Acts of the 65th Legislature, Regular Session, 1977, as amended);[47]

(6) Article 7261.1, Vernon's Texas Civil Statutes (Section 3, Chapter 362, Acts of the 66th Legislature, Regular Session, 1979);[48]

(7) Article 7261a, Vernon's Texas Civil Statutes (Chapter 847, Acts of the 65th Legislature, Regular Session, 1977);[49] and

(8) the provisions of Title 122, Revised Civil Statutes of Texas, 1925, as amended, and those laws compiled in Volume 20, Vernon's Texas Civil Statutes, that are repealed on January 1, 1982, by Chapter 841, Acts of the 66th Legislature, Regular Session, 1979.

(d) A law that is transferred from Title 122 or Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, by this Act, or a provision compiled in Volume 20 or 20A, Vernon's Texas Civil Statutes, that is designated as an article of the Revised Civil Statutes of Texas, 1925, as amended by this Act, is not repealed.

(e) The following are repealed:

(1) Section 75, Texas Election Code (Article 7.10, Vernon's Texas Election Code);[50]

(2) Section 2, Chapter 286, Acts of the 40th Legislature, Regular Session, 1927;[51]

(3) Section 6, Chapter 73, General Laws, Acts of the 42nd Legislature, Regular Session, 1931;

(4) Section 2, Chapter 192, General Laws, Acts of the 43rd Legislature, Regular Session, 1933;[52]

(5) Sections 2 and 3, Chapter 31, Acts of the 43rd Legislature, 1st Called Session, 1933;

(6) Section 8 of Article II[53] and Section 4 of Article XVIII[54] of Chapter 184, and Chapter 631,[55] Acts of the 47th Legislature, Regular Session, 1941;

(7) Chapter 275, Acts of the 48th Legislature, Regular Session, 1943;[56]

(8) Section 8, Chapter 269, Acts of the 49th Legislature, Regular Session, 1945;[57]

(9) Article XXV, Chapter 402, Acts of the 52nd Legislature, Regular Session, 1951;[58]

(10) Section 2, Chapter 17, Acts of the 57th Legislature, Regular Session, 1961;[59] and

(11) Section 4 of Chapter 138[60] and Section 3 of Chapter 441,[58] Acts of the 58th Legislature, Regular Session, 1963.

45. Vernon's Ann.Civ.St. art. 7150.1 note.
46. Vernon's Ann.Civ.St. art. 7150o note.
47. Vernon's Ann.Civ.St. art. 7244b note.
48. Vernon's Ann.Civ.St. art. 7261.1 note.
49. Vernon's Ann.Civ.St. art. 7261a note.
50. V.A.T.S. Election Code, art. 7.10, repealed.
51. Vernon's Ann.Civ.St. art. 7067a, repealed.
52. Vernon's Ann.Civ.St. art. 7076a, repealed.
53. Acts 1941, 47th Leg., p. 276, ch. 184, § 1 (§ 8), repealed.
54. Vernon's Ann.Civ.St. art. 7064 note, repealed.
55. Vernon's Ann.Civ.St. art. 7047a—20, repealed.
56. Vernon's Ann.Civ.St. art. 7047c—3, repealed.
57. V.A.T.S. Tax.-Gen. art. 3.01 note, repealed.
58. V.A.T.S. Tax.-Gen. art. 4.02 note, repealed.
59. Vernon's Ann.Civ.St. art. 7260 note, repealed.
60. V.A.T.S. Tax.-Gen. arts. 6.01 note, 12.21 note, 20.01 note, repealed.

(f) H.B. No. 4, Acts of the 67th Legislature, Regular Session, 1981, is repealed.[61]

(g) Section 9 of S.B. No. 151, Acts of the 67th Legislature, Regular Session, 1981, is repealed.[62]

(h) [63] Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, are repealed.[64] Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196.

(i) S.B. No. 243, Acts of the 67th Legislature, Regular Session, 1981, is repealed.[65]

(j) S.B. No. 370, Acts of the 67th Legislature, Regular Session, 1981, is repealed.[66]

(k) S.B. No. 655, Acts of the 67th Legislature, Regular Session, 1981, is repealed.[67]

(*l*) [68] Sections 1 through 8 of S.B. No. 371, Acts of the 67th Legislature, Regular Session, 1981, are repealed.[69] Section 10 of S.B. No. 371, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 371 in the same manner that Section 10 of S.B. No. 371 applies to the provisions of S.B. No. 371.

Legislative Intent

Sec. 40.[70] This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

Effective Date

Sec. 41.[70] This Act takes effect January 1, 1982, except that the comptroller of public accounts may adopt rules and provide forms consistent with the provisions of this Act in anticipation of the effective date.

Emergency

Sec. 42. The importance of this legislation and the crowded condition of the calendars in both houses create 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 this rule is hereby suspended.

Passed by the House on May 15, 1981, by a non-record vote: House concurred in Senate amendments to H.B. No. 1708 on May 31, 1981, by a non-record vote; passed by the Senate, with amendments, on May 29, 1981, by a viva-voce vote.

Approved June 10, 1981.

Effective Jan. 1, 1982.

61. Chapter 22, repealed.
62. Chapter 10, § 9, repealed.
63. V.T.C.A. Tax Code, §§ 111.060 note, 111.015 note, 111.104 note, 111.106 to 111.108 note, 112.155 note, 112.156 note.
64. Chapter 20, §§ 1 to 18, repealed.
65. Chapter 45, repealed.
66. Chapter 64, repealed.
67. Chapter 89, repealed.
68. V.T.C.A. Tax Code, §§ 111.201 to 111.-203 note.
69. Chapter 102, §§ 1 to 8, repealed.
70. V.T.C.A. Tax Code, prec. § 101.001 note.