

BILL ANALYSIS

Senate Research Center

S.B. 1488
By: Armbrister
Finance
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As Filed

DIGEST

Each legislative session, the comptroller of public accounts identifies certain aspects of the Tax Code that contain technical errors, ambiguous language, or outdated section references, and suggests amendments that would correct, conform, or ease the administration of those provisions. This bill would make technical changes to statutes involving taxes or fees administered by the comptroller of public accounts.

PURPOSE

As proposed, S.B. 1488 makes technical changes to statutes involving taxes or fees administered by the comptroller of public accounts.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller of public accounts in SECTION 66 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 102.075(g), Code of Criminal Procedure, to authorize a municipality or county to retain 10 percent of the money collected under this article as a service fee for collection if the municipality or county remits the funds to the comptroller of public accounts (comptroller) within the period prescribed in Subsection (f). Makes a nonsubstantive change.

SECTION 2. Amends Section 12(b), Article 1.14-1, Insurance Code, to provide that the report and tax are due on or before May 15, rather than March 1, of the calendar year after the calendar year in which the insurance was procured, continued, or renewed or on another date prescribed by the comptroller.

SECTION 3. Amends Sections 12(a) and (b), Article 1.14-2, Insurance Code, to require the surplus lines agent to file a report and pay taxes to the comptroller by a certain date on forms prescribed by the comptroller. Requires the amount of taxes to be based on gross premiums written or received for such insurance placed through an eligible surplus lines insurer during the calendar year ending on the preceding December 31. Requires a tax prepayment to be required any time accrued taxes due equal or exceed \$70,000. Requires the prepayment of the accrued taxes, together with a form prescribed by the comptroller, to be due by the 15th day of the month following the month in which accrued taxes total \$70,000. Deletes text providing that all surplus lines premium receipt taxes are required to be maintained by the surplus agent in a separate account and not mingled. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 9(b), Article 3.50-3, V.T.C.S. (Texas State College and University Employees Uniform Insurance Benefits Act), to provide that premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act are not subject to any state tax, regulatory fee, or surcharge.

SECTION 5. Amends Section 11(b), Article 3.50-4, V.T.C.S. (Texas Public School Employees Group Insurance Act), to make a conforming change.

SECTION 6. Amends Section 326.029(a), Local Government Code, to require the commissioners court, if a majority of the votes received in the election favor the creation of the district and the adoption of the sales and use tax, to declare that the district is created.

SECTION 7. Amends Section 326.092(a), Local Government Code, to make conforming changes.

SECTION 8. Amends Section 101.003, Tax Code, by adding Subdivision (13), to define “tax.”

SECTION 9. Amends Section 111.0041(b), Tax Code, to delete text providing that this section prevails over conflicting provisions of this title except Section 191.024(b).

SECTION 10. Amends Section 111.104(e), Tax Code, to delete text providing that this section does not apply to those taxes that qualify for refund allowed under Section 151.318(g) or (n).

SECTION 11. Amends Section 111.107, Tax Code, to delete text providing certain conditions when a refund or credit is not permitted.

SECTION 12. Amends Sections 151.310(c) and (e), Tax Code, to provide that the sale of certain taxable items is exempted from the sales tax imposed by Subchapter C of this chapter, except that a taxable item manufactured by or donated to the qualified organization or chapter of the organization may be sold tax free regardless of the sales price to any purchaser other than the donor. Requires a nonprofit hospital or hospital system that qualifies for an exemption under Subsection (a)(2) to provide community benefits that include charity care and government-sponsored indigent health care, as set forth in Chapter 311D, Health and Safety Code, rather than community benefits as set forth in certain subdivisions of this section. Deletes text setting forth the community benefits, defining certain terms for the purposes of this subsection, and providing regulations regarding the provision of charity care and government-sponsored indigent health care.

SECTION 13. Amends Section 151.312, Tax Code, to provide that periodicals and writings, including those presented on audio tape, video tape, and computer disk, that are published and distributed by certain organizations are exempted from the taxes imposed by this chapter.

SECTION 14. Amends Sections 151.318(a), (c), (g), (o), (q), and (s), Tax Code, to provide that certain items are exempted from the taxes imposed by this chapter if sold, leased, or rented to, or stored, used, or consumed by a manufacturer. Sets forth certain items that are eligible for the exemption from the taxes imposed by this chapter. Deletes text setting forth certain items that are eligible for the exemption. Deletes text providing that “semiconductor fabrication cleanrooms and equipment” are not “used incidentally in a manufacturing, processing, or fabrication operation” as that term is used in Subsection (c)(2). Makes conforming and nonsubstantive changes.

SECTION 15. Amends Section 151.321(a), Tax Code, to provide that a taxable item sold by a qualified student organization and for which the sales price is \$5,000 or less, is exempted from the taxes imposed by Subchapter C, except that a taxable item manufactured by or donated to the organization is exempt from the taxes imposed by Subchapter C, regardless of sales price unless sold to the donor, if the student organization meets certain conditions.

SECTION 16. Amends Section 151.350(d), Tax Code, to redefine “restore.”

SECTION 17. Amends Sections 151.429(d) and (g), Tax Code, to require the Texas Department of Economic Development, rather than the department of commerce, to provide the comptroller with the assistance that the comptroller requires in administering this section. Makes conforming changes.

SECTION 18. Amends Section 151.429(e)(1), Tax Code, to make a conforming change.

SECTION 19. Amends Sections 151.4291(d) and (g), Tax Code, to make conforming changes.

SECTION 20. Amends Section 151.4291(e)(1), Tax Code, to make a conforming change.

SECTION 21. Amends Section 151.431(a), Tax Code, to make a conforming change.

SECTION 22. Amends Section 152.041, Tax Code, to authorize the county tax assessor-collector, if a motor vehicle title applicant has paid the tax to the seller who is required by this chapter to collect the tax and the seller has failed to remit the tax to the tax assessor-collector, to accept application for title to the motor vehicle without the payment of additional tax by the applicant. Requires the motor vehicle title applicant to present satisfactory documentation to the tax assessor-collector that the tax was paid, before title to the motor vehicle may be issued under these circumstances. Requires the county tax assessor-collector to notify the comptroller in writing of the seller’s failure to remit the tax. Sets forth the

requirements of the notice.

SECTION 23. Amends Sections 153.117(a), (b), (d), and (h), Tax Code, to require a distributor to keep a record showing the number of gallons of all gasoline lost by theft. Makes conforming changes.

SECTION 24. Amends Sections 153.119(a) and (e), Tax Code, to delete text providing that certain people are entitled to the reimbursement of the tax paid by him, less a filing fee and any amount allowed to wholesalers or jobbers, dealers, or others under Section 153.105(c). Makes conforming changes.

SECTION 25. Amends Section 153.121(a), Tax Code, to make a conforming change.

SECTION 26. Amends Section 153.206, Tax Code, by adding Subsection (j), to require the amount of tax in each subsequent sale of diesel fuel on which the tax has been collected to be added to the selling price so that the tax is paid ultimately by the person using or consuming the diesel fuel for the purpose of propelling a vehicle on the public highways of this state.

SECTION 27. Amends Sections 153.219(a) - (d), and (i), Tax Code, to make conforming changes.

SECTION 28. Amends Section 153.222(e), Tax Code, to make a conforming change.

SECTION 29. Amends Section 153.224(a), Tax Code, to make a conforming change.

SECTION 30. Amends Section 154.114(c) and (g), Tax Code, to require the comptroller to deliver, rather than mail by certified mail, return receipt requested, the written notice by personal service or by mail, to the permit holder's mailing address as it appears on the comptroller's records. Provides that service by mail is complete when the notice is deposited with the U.S. Postal Service, rather than received, as evidenced by return receipt. Requires the comptroller, if the comptroller suspends or revokes a permit, to provide written notice of the suspension or revocation to each distributor or wholesaler permit holder in the state. Makes conforming changes.

SECTION 31. Amends Section 154.210(a), Tax Code, to require the distributor to deliver to the comptroller, on or before the last day of each month, rather than the 15th day, a report for the preceding month.

SECTION 32. Amends Section 154.308(b), Tax Code, to make conforming changes.

SECTION 33. Amends Sections 154.309(b) and (d), Tax Code, to require a written request for redetermination to be filed at the comptroller's office not later than the 30th day after the date notice of deficiency is issued, rather than the 15th working day after the date notice of deficiency is received. Makes conforming changes.

SECTION 34. Amends Section 155.059(c), Tax Code, to make conforming changes.

SECTION 35. Amends Section 155.103(b), Tax Code, to make a conforming change.

SECTION 36. Amends Section 155.111(a), Tax Code, to make a conforming change.

SECTION 37. Amends Section 155.185(b), Tax Code, to make conforming changes.

SECTION 38. Amends Section 155.186(b) and (d), Tax Code, to make conforming changes.

SECTION 39. Amends Section 156.102, Tax Code, to set forth corporations and associations that this chapter does not impose a tax upon.

SECTION 40. Amends Sections 156.103(a), (b), (c), and (d), Tax Code, to set forth the entities that this chapter does not impose a tax on. Requires this state, or an agency, institution, board, or commission of this state other than an institution of higher education, to pay the tax imposed by this chapter and is entitled to a refund of the amount of tax paid in accordance with Section 156.154, rather than a governmental entity otherwise excepted under this section. Deletes text setting forth entities that this chapter does not impose a tax on. Makes conforming and nonsubstantive changes.

SECTION 41. Amends Section 171.063, Tax Code, by amending Subsection (a) and by adding Subsection (h), to authorize a requirement that a nonprofit hospital provide charity care and community benefits under Subsection (a)(1) to be satisfied by a donation of money to the Texas Healthy Kids Corporation, established by Chapter 109, Health and Safety Code, under certain conditions. Makes conforming changes.

SECTION 42. Amends Sections 171.063(c) and (d), to provide that if the Internal Revenue Service (IRS) has not timely issued to a corporation a letter of exemption, evidence establishing the corporation's provisional exemption under this section is sufficient if the corporation timely files with the comptroller evidence that the corporation has applied in good faith for the federal tax exemption. Requires the evidence to be filed by a certain date. Deletes text requiring the IRS's letter of exemption to be filed with the comptroller by a certain date. Makes conforming changes.

SECTION 43. Amends the heading of Subchapter C, Chapter 171, Tax Code, as follows:

SUBCHAPTER C. DETERMINATION OF TAXABLE CAPITAL AND TAXABLE EARNED SURPLUS; ALLOCATION AND APPORTIONMENT

SECTION 44. Amends the heading of Section 171.1015, Tax Code, as follows:

Sec. 171.1015. New heading: REDUCTION OF TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS FOR INVESTMENT IN AN ENTERPRISE ZONE.

SECTION 45. Amends Section 171.1015(f)(1), Tax Code, to make a conforming change.

SECTION 46. Amends Section 171.1015(g), Tax Code, to make a conforming change.

SECTION 47. Amends the heading of Section 171.1016, Tax Code, as follows:

Sec. 171.1016. New heading: REDUCTION OF TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS FOR INVESTMENT IN A READJUSTMENT ZONE.

SECTION 48. Amends Section 171.1016(f)(1), Tax Code, to make a conforming change.

SECTION 49. Amends Section 171.1016(g), Tax Code, to make a conforming change.

SECTION 50. Amends the heading of Section 171.107, Tax Code, as follows:

Sec. 171.107. New heading: DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE.

SECTION 51. Amends Section 171.110, Tax Code, by adding Subsections (i) and (j), to set forth for the purposes of this section, the conditions under which a person designated as an officer is presumed to be an officer. Authorizes a corporation to rebuke the presumption if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policymaking aspects of the corporate operations.

SECTION 52. Amends Section 171.501(a), Tax Code, to make conforming changes.

SECTION 53. Amends the heading of Subchapter C, Chapter 183, Tax Code, as follows:

SUBCHAPTER C. New heading: MIXED BEVERAGE TAX CLEARANCE

SECTION 54. Amends the heading of Section 183.051, Tax Code, as follows:

Sec. 183.051. New heading: MIXED BEVERAGE TAX CLEARANCE.

SECTION 55. Amends Section 183.051(b), Tax Code, to require the comptroller to issue to each county a warrant drawn on the general revenue fund, rather than the mixed beverage tax clearance fund, in the amount of 10.7143 percent of mixed beverage receipts from permittees within the county during the

quarter and shall issue to each incorporated municipality a warrant drawn on that fund in a certain amount. Deletes text requiring the remainder of the receipts for the quarter and all interest earned on that fund to be transferred to the general revenue fund. Makes conforming changes.

SECTION 56. Amends Section 191.085(b), Tax Code, to require the person to keep the record open for four years, rather than two years, for inspection by the comptroller or the attorney general.

SECTION 57. Amends Section 203.051(a), Tax Code, to authorize a producer to destroy a record required by this section four years, rather than three years, after the last entry in the record.

SECTION 58. Amends Section 321.103, Tax Code, by adding Subsections (e), (f), and (g), to provide that if as a result of the imposition or increase in a sales and use tax by a municipality in which there is located all or part of a local governmental entity with an existing sales and use tax or as a result of the annexation by a municipality of all or part of the territory in a local governmental entity with an existing sales and use tax the overlapping local sales and use taxes in the area will exceed two percent, the entity's sales and use tax is automatically reduced in that area to a rate that when added to the combined rate of local sales and use taxes will equal two percent. Requires the comptroller, if an entity's rate is reduced in accordance with Subsection (e), to withhold from the municipality's monthly sales and use tax allocation an amount equal to the amount that would have been collected by the entity had the municipality not imposed or increased its sales and use tax or annexed the area in the entity less amounts that the entity collects following the municipality's levy of or increase in its sales and use tax or annexation of the area in the district. Requires the comptroller to withhold and pay the amount withheld to the entity under policies or procedures that the comptroller considers reasonable. Provides that a transit authority is not a local governmental entity for the purposes of Subsections (e) and (f).

SECTION 59. Amends Section 323.102(c), Tax Code, to provide that a tax imposed under Section 323.105 of this code or Chapter 326, Local Government Code, takes effect on a certain date.

SECTION 60. Amends Section 323.105(e), Tax Code, to require the comptroller to remit to the county amounts collected at a certain rate in a certain manner, if the district is composed of the entire county. Requires the comptroller, rather than the county, to remit the amount to the district, if the district is composed of an area less than the entire county.

SECTION 61. Amends Section 351.006, Tax Code, to provide that a United States governmental entity described in Section 156.103(a) is exempt from the payment of tax authorized by this chapter. Requires a state governmental entity described in Section 156.103(b) to pay the tax imposed by this chapter but is entitled to a refund of the tax paid. Makes conforming changes.

SECTION 62. Amends Section 352.007, Tax Code, to provide that a United States governmental entity described in Section 156.103(a) is exempt from the payment of tax authorized by this chapter. Requires a state governmental entity described in Section 156.103(b) to pay the tax imposed by this chapter but is entitled to a refund of the tax paid. Makes conforming changes.

SECTION 63. Reenacts Subsection 4B(e), Article 5190.6, V.T.C.S. (Development Corporation Act of 1979), as amended by Section 3, Chapter 1022, and Section 12, Chapter 1031, Acts of the 73rd Legislature, Regular Session, 1993, to set forth requirements regarding tax rates, election to reduce taxes, and excise taxes.

SECTION 64. Repealer: Section 152.062(d), Tax Code (Required Affidavits).

SECTION 65. Sets forth certain provisions in which a change in law is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this Act.

SECTION 66. Authorizes the comptroller to adopt rules and take other actions before October 1, 1999, as the comptroller deems necessary or advisable to prepare for the taking effect of this Act.

SECTION 67. Effective date: October 1, 1999, except as provided by Subsections (b)-(d). Provides that SECTION 3 takes effect January 1, 2000, and makes application of this SECTION prospective. Provides that SECTIONS 41-52 take effect January 1, 2000, and makes application of those SECTIONS prospective. Provides that SECTIONS 59 and 66 take effect on the earliest date on which they may take effect under Section 39, Article III, Texas Constitution.

SECTION 68. Emergency clause.