

BILL ANALYSIS

Senate Research Center
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S.B. 1279
By: Armbrister
Finance
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DIGEST AND PURPOSE

As the principal administrator of tax collection and revenue management, the Office of the Comptroller of Public Accounts relies on its rulemaking authority to facilitate the performance of its duties. As proposed, S.B. 1279 codifies policies, facilitates enforcement, and makes technical corrections to state law.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public account in SECTIONS 14 (Section 11.0046, Tax Code), 31 (Section 153.205, Tax Code) and 39 (Section 156.104, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.122, Health and Safety Code, by adding Subsection (f), to provide that a person commits an offense if the person places or authorizes the placement of a sign in a location that is in violation of this section. Provides that an offense under this subsection is a Class C misdemeanor.

SECTION 2. Amends Article 1.16(b), Insurance Code, to require the amount of all examination and evaluation fees, rather than the assessments, paid in each taxable year to the State of Texas by an insurance carrier, rather than corporation or association hereby affected, to be allowed as a credit on the amount of premium taxes due under this article, rather than to be paid by any such insurance corporation or association for such taxable year. Provides that the limitations provided in Article 1.28, Section 2(a)(2) and (3) for domestic insurance companies apply to foreign insurance companies. Makes nonsubstantive changes.

SECTION 3. Amends Section 1, Article 4.10, Insurance Code, to add “inter-insurance” exchanges to the list of organizations required to pay the comptroller of public accounts a tax upon receiving gross premiums from certain business as provided in this article.

SECTION 4. Amends Section 13, Article 4.10, Insurance Code, to provide that the limitations provided in Article 1.28, Section 2(a)(2) and (3) for domestic insurance companies apply to foreign insurance companies. Makes conforming changes.

SECTION 5. Amends Section 8, Article 4.11, Insurance Code, to require the amount of all examination and evaluation, rather than valuation, fees paid in, rather than during each taxable year to the State of Texas by an insurance carrier to be allowed as a credit on the amount of premium taxes due under this article. Makes conforming changes.

SECTION 6. Amends Article 4.14(a), Insurance Code, to require the gross premiums reported to not include the amount of premiums paid on certain policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of certain entities.

SECTION 7. Amends Section 7, Article 9.59, Insurance Code, to make conforming changes.

SECTION 8. Amends Article 17.22(a), Insurance Code, to make a conforming change.

SECTION 9. Amends Section (b), Article 20A.32, Insurance Code, to prohibit a credit against the amount of premium taxes to be paid by the health maintenance organization in a taxable year from being allowed on certain expenses and fees relating to an examination. Creates new Subsection (b)(1) from existing text.

SECTION 10. Amends Article 20A.33(d), Insurance Code, to make a conforming change.

SECTION 11. Amends Section 101.053(b), Insurance Code, to provide that Sections 101.051 and 101.052 do not apply to a transaction that involves an insurance contract independently procured by the insured from an insurance company not authorized to do insurance business in this state through negotiations occurring entirely outside this state.

SECTION 12. Amends Section 376.470, Local Government Code, as added by Chapter 1433, Acts of the 77th Legislature, Regular Session, 2001, by adding Subsection (d), to provide that Chapter 321, Tax Code, applies to certain actions relating to sales and use tax imposed by this section except to the extent it is inconsistent with the provisions of this chapter.

SECTION 13. Amends Section 2153.153(a), Occupations Code, to require a license applicant to file with the comptroller a license application that is accompanied by a cashier's check, money order, personal check, or other method of payment authorized by the comptroller in an amount equal to the annual license fee under Section 2153.154. Makes nonsubstantive changes.

SECTION 14. Amends Section 111.0046, Tax Code, to authorize the comptroller to establish by rule the minimum age for a person who may apply for a permit or license issued by the comptroller.

SECTION 15. Amends Sections 111.012(a) and (g), Tax Code, as follows:

(a) Deletes existing text related to the comptroller requiring a taxpayer who is delinquent in the payment of the tax to take certain actions.

(g) Authorizes the comptroller take certain actions if a taxpayer does not furnish security to the comptroller or establish a tax escrow account as required by the comptroller before a certain day.

SECTION 16. Amends Section 113.006(b), Tax Code, to provide that one tax lien notice is sufficient to cover all taxes of any, rather than the same, nature administered by the comptroller, including penalty and interest computed by reference to the amount of tax, that may have accrued before or after the filing of the notice.

SECTION 17. Amends Section 151.0035, Tax Code, to provide that data storage does not include certain advertisements or links when these items are displayed on an Internet web page owned by another. Makes a nonsubstantive change.

SECTION 18. Amends Section 151.005, Tax Code, to redefine "sale" or "purchase."

SECTION 19. Amends Section 151.056(f), Tax Code, to provide that a contractor is not eligible for the exemptions provided in Section 151.318 on items used in the performance of contracts to improve real property.

SECTION 20. Amends Section 151.313(a), Tax Code, to include intravenous systems, supplies, and replacement parts used in the treatment of humans in the list of items exempted from the taxes of this chapter.

SECTION 21. Amends Section 151.314(e), Tax Code, to provide that a sale is exempted under this subsection if the sale is made by a volunteer for certain nonprofit organizations. Deletes existing text relating to a sale being exempted under this section if the sale is made by a person under 19 years old and who meets other requirements.

SECTION 22. Amends Section 151.319(f), Tax Code, to increase from 75 cents to \$1.50, the average sales price of which for each copy over a 30-day period does not exceed in the definition of “newspaper” in this section.

SECTION 23. Amends Section 151.323, Tax Code, to provide that the exemption provided under this section does not apply to mobile telecommunications services. Creates new Subsection (a) from existing text.

SECTION 24. Amends Section 151.3501, Tax Code, as follows:

Sec. 151.3501. LABOR TO RESTORE, REPAIR, OR REMODEL HISTORIC SITES.

(a) Provides that certain labor relating to real property is exempted from the taxes imposed by this chapter if certain conditions apply.

(b) Provides that the exemption provided in this sections does not apply to tangible personal property transferred by the service provider to the purchaser as part of the service.

SECTION 25. Amends Section 151.335, Tax Code, as added by Acts 2001, 77th Legislative Chapter 1234, Section 39, to add “solely” as a modifier for the purposes of certain equipment, services, and supplies.

SECTION 26. Amends Section 152.086(a), Tax Code, to provide that the taxes imposed by this chapter do not apply to the sale or use of a motor vehicle that has been or will be modified within two years of purchase for the transportation of an orthopedically handicapped person.

SECTION 27. Amends Chapter 152F, Tax Code, by adding Section 152.106, as follows:

Sec. 152.106. PROHIBITED ADVERTISING; CRIMINAL PENALTY (a) Provides that a person who is required by Chapter 503, Transportation Code, to hold a dealer’s general distinguishing number commits an offense if the person directly or indirectly advertises, holds out, or states to a customer or to the public that the person take certain actions relating to the tax.

(b) Provides that an offense under this section is a Class C misdemeanor punishable by a fine of not more than \$500.

SECTION 28. Amends Section 153.013(a), Tax Code, to include “other users” in the list of individuals who are presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to certain individuals, if certain items are not kept. Makes nonsubstantive changes.

SECTION 29. Amends Section 153.117, Tax Code, by adding Subsection (i), to require a user who files a claim for refund to keep a record showing the number gallons of gasoline used for certain purposes or lost, and a distribution log if used by a bulk user for documentation to support a refund claim.

SECTION 30. Amends Section 153.120, Tax Code, by adding Subsection (d), to require a distribution log filed with the comptroller to support the number of gallons of gasoline removed from a user’s own bulk storage, to contain the name and address of the bulk user making the delivery stamped or preprinted on it and other certain information for each individual delivery from the bulk storage.

SECTION 31. Amends Section 153.205, Tax Code, as follows:

Sec. 153.205. STATEMENT FOR PURCHASE OF DIESEL FUEL TAX FREE. (a) Provides that the first sale or use of diesel fuel in this state is taxable, except that sales of dyed diesel fuel, or of undyed diesel fuel if the fuel will be used for an agricultural nonhighway purpose, to be made without collecting the tax if the purchaser furnishes to a

permitted supplier a signed statement, including an end user number or agricultural exemption number issued by the comptroller. Requires a person who wants to use a signed statement to purchase dyed diesel fuel to apply to the comptroller for an end user number to be used in conjunction with a signed statement. Requires a person who wants to use a signed statement to purchase dyed or undyed diesel fuel for an agricultural nonhighway purpose to apply to the comptroller for an agricultural exemption number to be used in conjunction with a signed statement. Prohibits a supplier from making a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number or agricultural exemption number issued by the comptroller under this section.

(b) Authorizes a sale of dyed diesel fuel to be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an end user number issued by the comptroller, that stipulates certain conditions.

(c) Authorizes a sale of dyed or undyed diesel fuel for an agricultural nonhighway use to be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an agricultural exemption number issued by the comptroller, that stipulates certain conditions.

(d) Prohibits a person from making a tax-free purchase or a permitted supplier from making a tax-free sale to a purchaser of any diesel fuel under this section using a signed statement under certain conditions.

(e) Provides that any gallons purchased or sold in excess of the limitations prescribed by Subsection (d) constitute a taxable purchase or sale. Authorizes the purchaser paying the tax on dyed or undyed diesel fuel in excess of the limitations prescribed by Subsection (d) to claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

(f) Provides that the signed statement and end user number or agricultural exemption number from the purchaser as provided by this section relieves the permitted supplier from the burden of proof that the sale of dyed diesel fuel or of undyed diesel fuel for an agricultural nonhighway purpose was not taxable to the purchaser and remains in effect unless certain actions are taken.

(g) Requires the statement to be signed by the purchaser or his representative.

(h) Authorizes the comptroller's regulations to allow separate operating divisions of corporations to give separate signed statements as if they were different legal entities.

(i) Authorizes the comptroller to promulgate necessary forms and rules to administer and enforce this section.

(j) Provides that a taxable use of any part of the dyed or undyed diesel fuel purchased under a signed statement shall, in addition to any criminal penalty, forfeit the right of the person to purchase dyed or undyed 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. Authorizes the person to, however, claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

SECTION 32. Amends Section 53.208(d), Tax Code, to prohibit a supplier from making 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, a motor vehicle exclusively operated by a public school

district in this state, or a motor vehicle operated by a commercial transportation company that provides public school transportation services to a school district in this state under Section 34.008, Education Code (Contract with Transit Authority or Commercial Transportation Company), that is used by the company exclusively to provide those services.

SECTION 33. Amends Section 153.219(c), Tax Code, include a distribution log if used by a bulk user for documentation to support a refund claim to the list items certain individuals, who file a claim for a refund, are required to keep a record. Deletes existing text relating to other users with nonhighway equipment uses who file a claim for a refund. Makes a nonsubstantive change.

SECTION 34. Amends Section 153.222(a), Tax Code, to authorize a dealer or diesel fuel jobber who has paid tax on diesel fuel that has been used or sold for use by the dealer of diesel fuel jobber for any purpose except in a vehicle operated or intended to be operated, rather than other than propelling a motor vehicle, on the public highways or that meets other criteria, to file a claim for a refund of taxes paid, less the deduction allowed vendors.

SECTION 35. Amends Section 153.223, Tax Code, by adding Subsection (d) to make a conforming change.

SECTION 36. Amends Section 153.403, Tax Code, provide that a person commits an offense if the person uses dyed diesel fuel for the operation of a motor vehicle on a public highway, unless such use is permitted by another provision of this chapter, except as provided by Section 153.404. Deletes existing language relating to a tax required to be paid on dyed diesel fuel.

SECTION 37. Amends Section 156.051(a), Tax Code, to provide that a tax is imposed on a person who, under a lease, concession, permit, right of access, license, 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 \$15, rather than \$2, or more each day.

SECTION 38. Amends Section 156.102(b), Tax Code, to add "Texas" as a modifier to an institution of higher education for the purposes of this section.

SECTION 39. Amends Chapter 156, Tax Code by adding Section 156.104, as follows:

Sec. 156.104. EXEMPTION CERTIFICATE (a) Provides that the right to use or possess a room or space in a hotel is exempt from taxation under this chapter if the person required to collect the tax receives, in good faith from a guest, a properly completed exemption certificate stating qualification for an exemption provided in Section 156.102 or 156.103. Requires any exemption claimed by the issuance of an exemption certificate to be supported by the documentation required under rules adopted by the comptroller.

(b) Requires the comptroller to produce and maintain a list of entities that have been provided a letter of exemption under Section 156.102 from the state hotel occupancy tax under that section. Requires this listing to also be available on the comptroller's Internet website. Provides that this subsection is effective January 1, 2004.

SECTION 40. Amends Section 171.001(a), Tax Code, to provide that a franchise tax is imposed on certain entities.

SECTION 41. Amends Section 171.001(b)(2), Tax Code, to define "beginning date."

SECTION 42. Amends Section 171.052, Tax Code, to provide that a nonadmitted insurance organization, rather than company under Chapter 101, Insurance Code, that is required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for that same tax year. Deletes existing text relating to an insurance organization performing certain activities in this state.

SECTION 43. Amends Section 171.1032(b), Tax Code, to make a conforming change.

SECTION 44. Amends Section 171.1051(c), Tax Code, to make a conforming change.

SECTION 45. Amends Section 171.106, Tax Code, by adding Subsection (i), to provide that receipts from services that a defense readjustment project performs in defense of economic readjustment zone are not receipts from business done in this state.

SECTION 46. Amends Section 171.109(a), Tax Code, by adding Subdivision (4) to require a legally enforceable obligation that requires the return of a like-kind property that was borrowed be considered debt if it is a liability according to generally accepted accounting principles and if the return to be made within an ascertainable period of time or on demand. Provides that the amount that will be considered debt is the fair market value measured on the last day upon which the report is based as required by Section 171.153. Defines "like-kind property."

SECTION 47. Amends Section 171.110, Tax Code, by amending Subsection (a) and adding Subsections (k) and (l), as follows:

(a) Makes a conforming change.

(k) Provides that dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus purposes.

(l) Defines "federal obligations," "obligation," "United States government," "United States government agency," and "United States government-sponsored agency."

SECTION 48. Amends Sections 171.110(b) and (c), Tax Code, as follows:

(b) Makes a conforming change.

(c) Prohibits a subsidiary corporation from claiming the exclusion under Subsection (b) if it has a parent corporation that does not qualify for the exclusion. Provides that a corporation qualifies as a parent if it ultimately controls the subsidiary, even if the control arises through a series or group of other subsidiaries or entities, for purposes of this subsection. Provides that control is presumed if a parent company directly or indirectly owns, controls, or holds a majority of the outstanding voting stock of a corporation or ownership interests in another entity

SECTION 49. Amends Section 171.203, Tax Code, by adding Subsection (f), to require a public information report filed electronically to be deemed to satisfy the signature and certification requirement in Subsection (d).

SECTION 50. Amends Chapter 171O, Tax Code, by adding Section 171.731, as follows:

Sec. 171.731. ASSIGNMENT PROHIBITED. Prohibits a corporation from taking certain actions relating to the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

SECTION 51. Amends Sections 171.751(1) and (8), Tax Code, as follows:

(1) Adds category 0724 to the list of categories in the definition of "agricultural processing."

(8) Defines "qualified business" until January 1, 2005.

SECTION 52. Amends Section 171.753, Tax Code, to authorize a corporation to establish credit, equal to five percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based, on each of five consecutive reports beginning

with the report based upon the period during which the qualifying jobs were created.

SECTION 53. Amends Chapter 171, Tax Code, by adding Section 171.7541, as follows:

Sec. 171.7541. LENGTH OF CREDIT. Authorizes a corporation that has been designated as an enterprise project or as a defense readjustment project to establish a credit equal to twenty-five percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based, notwithstanding Section 171.753. Provides that this section expires January 1, 2005.

SECTION 54. Amends Section 171.802, Tax Code, by adding Subsection (d), to authorize a corporation that is certified by the Texas Department of Economic Development as a qualified business under Section 2303.402 or under Section 2310.302, Government Code, to qualify for the credit, regardless of whether it meets the qualifications prescribed by subsection (b) of this section. Provides that this subsection expires January 1, 2005.

SECTION 55. Amends the heading of Chapter 171S, Tax Code, as added by Chapter 1263, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER U. CREDITS LIMITATION

SECTION 56. Redesignates Section 171.851, Tax Code, as added by Chapter 1263, Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 171.871. LIMITATION

SECTION 57. Amends Section 171.853(c) Tax Code, to prohibit the credit claimed for each privilege period from exceeding 50 percent of the amount of franchise tax due before, rather than after, any other applicable tax credits for the privilege period. Deletes existing term "net" relating to the franchise tax due.

SECTION 58. Amends Chapter 171, Tax Code, by adding Subchapter T, as follows:

SUBCHAPTER T. TAX CREDIT FOR TITLE INSURANCE HOLDING COMPANIES.

Sec. 171.861. TAX CREDIT FOR TITLE INSURANCE HOLDING COMPANIES. (a) Provides that the definitions for this section are the same as for Article 21.49-1, Insurance Code (Insurance Holding Company System Regulatory Act).

(b) Provides that a title insurance holding company that is subject to Article 21.49-1, Insurance Code, and which controls one or more domestic title insurance companies that are subject to the tax on premiums under Article 9.59, Insurance Code (Title Insurance Companies; Tax on Premiums), is entitled to a credit against its franchise tax imposed by this chapter. Provides that the amount of the credit for each controlled domestic title insurance company is computed by a certain equation. Provides that the percentage of ownership of a controlled domestic title insurance company is determined as of the accounting year-end upon which the franchise tax report is based.

(c) Provides that a claim for a credit is subject to certain limitations.

(d) Provides that this section does not exempt a title insurance holding company, a title insurance company, or a title insurance agent from paying any tax imposed under this code, except that a title insurance company or a title insurance agent whose principal activity is the business of title insurance is exempt from any tax imposed by this chapter.

SECTION 59. Amends Section 201.057(c), Tax Code, to delete existing text relating to a certain date before high-cost gas produced from a well is spudded or completed, in order to be entitled to

certain tax reductions.

SECTION 60. Amends Section 202.054(c), Tax Code, to delete existing text relating to a certain date certain actions must be completed before for certain conditions to apply.

SECTION 61. Amends Chapter 321, Tax Code, by adding Section 321.107, as follows:

Sec. 321.107. ADMINISTRATION OF LOCAL SALES AND USE TAXES IMPOSED BY OTHER GOVERNMENTAL ENTITIES. Provides that the imposition, computation, administration, enforcement, and collection of any local sales and use tax imposed by any other local governmental entity is governed by this chapter, except as otherwise provided by law. Provides that "other local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax, in this section. Provides that the term does not include municipalities, counties, county health services districts, county landfill and criminal detention center districts, metropolitan transportation authorities, economic development districts, crime control districts, hospital districts, emergency services districts, or library districts.

SECTION 62. Amends Section 322.001(a), Tax Code, to make a conforming change.

SECTION 63. Amends Section 322.002, Tax Code, to include a county transit authority created under Chapter 460, Transportation Code (Coordinated County Transportation Authorities), in the definition of "taxing entity." Makes conforming and nonsubstantive changes.

SECTION 64. Repealer: Sections 151.355, Tax Code, as added by Acts 2001, 77th Leg., ch. 966, Section 4.25; Section 153.205, Tax Code, as amended by Section 37, Chapter 1263, Acts of the 77th Legislature, Regular Session, 2001; Section 153.205, Tax Code, as amended by Section 2, Chapter 1444, Acts of the 77th Legislature, Regular Session, 2001; Section 171.754, Tax Code, as amended by Section 1.10, Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001; and Section 2.08, Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 65. Makes a nonsubstantive change.

SECTION 66. EFFECTIVE DATES. (a) Effective date: September 1, 2003.

(b) Provides that SECTIONS 15, 29, 37, and 38 of this Act take effect October 1, 2003.

(c) Provides that SECTION 16 of this Act takes effect September 1, 2003, and is prospective.

(d) Provides that SECTION 2, 4, 5, 7, and 9 of this Act take effect January 1, 2004.

(e) Provides that SECTIONS 46, 49, and 57 of this Act take effect January 1, 2004, and are prospective.

(f) Provides that SECTIONS 51, 52, 53 and 54 of this Act take effect September 1, 2003, and are prospective.