

BILL ANALYSIS

Senate Research Center

H.B. 3572
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current Texas law, mixed alcoholic beverages, and nonalcoholic beverages mixed with those beverages, are subject to taxes at a rate of 14 percent of the gross receipts of certain alcoholic beverage permit holders. Interested parties assert that there should be better transparency for consumers in the taxing of these beverages, similar to the collection of sales taxes by wine and beer permit holders. The current method of taxation also has many disadvantages for the mixed beverage permit holders, requiring payment from both an operational and an administrative perspective.

H.B. 3572 revises the law governing the mixed beverage tax and imposes a more transparent and easily administered alcoholic beverage tax, placing all restaurants on a more level tax field.

H.B. 3572 amends current law relating to the administration, collection, and enforcement of taxes on mixed beverages, imposes a tax on sales of mixed beverages, and decreases the rate of the current tax on mixed beverages.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.308(a), Tax Code, as follows:

(a) Exempts the following from the taxes imposed by this chapter (Limited Sales, Excise, and Use Tax):

- (1) gas as taxed by Chapter 201 (Gas Production Tax);
- (2)-(3) Redesignates existing Subdivisions (1) and (2) as Subdivisions (2) and (3) and makes no further change to these subdivisions;
- (4) motor fuels, compressed and liquefied natural gas, and special fuels as defined, taxed, or exempted by Chapter 162 (Motor Fuel Taxes);
- (5)-(6) Redesignates existing Subdivisions (4) and (5) as Subdivisions (5) and (6) and makes no further change to these subdivisions;
- (7) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Subchapter B, Chapter 183, or the items are taxable by Subchapter B-1, Chapter 183; and
- (8)-(10) Redesignates existing Subdivisions (7)-(9) as Subdivisions (8)-(10) and makes no further change to these subdivisions.

SECTION 2. Amends the heading to Subtitle G, Title 2, Tax Code, to read as follows:

SUBTITLE G. GROSS RECEIPTS AND MIXED BEVERAGE TAXES

SECTION 3. Amends the heading to Chapter 183, Tax Code, as follows:

CHAPTER 183. MIXED BEVERAGE TAXES

SECTION 4. Amends Section 183.001(b), Tax Code, by adding Subdivision (3) to define "sales price."

SECTION 5. Amends the heading to Subchapter B, Chapter 183, Tax Code, to read as follows:

SUBCHAPTER B. MIXED BEVERAGE GROSS RECEIPTS TAX

SECTION 6. Amends Section 183.021, Tax Code, as follows:

Sec. 183.021. New heading: TAX IMPOSED ON GROSS RECEIPTS OF PERMITTEE FROM MIXED BEVERAGES. Imposes a tax at the rate of 6.7 percent, rather than 14 percent, on the gross receipts of a permittee received from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

SECTION 7. Amends Sections 183.0212(a) and (b), Tax Code, as follows:

(a) Authorizes a permittee, for informational purposes only, to provide that each sales invoice, billing, service check, ticket, or other receipt to a customer for the purchase of an item subject to taxation under this subchapter, rather than under this chapter, include:

(1) a separate statement disclosing the amount of tax to be paid by the permittee under this subchapter, rather than under this chapter, in relation to that item; or

(2) a statement of the mixed beverage taxes, consisting of the combined amount of the tax to be paid by the permittee under this subchapter in relation to that item and the amount of tax imposed under Subchapter B-1 on that item.

(b) Requires that a statement under Subsection (a)(1), rather than the separate statement, clearly disclose the amount of tax payable by the permittee.

SECTION 8. Amends Sections 183.024(a) and (d), Tax Code, as follows:

(a) Requires a permittee who fails to file a report as required by this subchapter, rather than by this chapter, or who fails to pay a tax imposed by this subchapter, rather than by this chapter, when due to pay five percent of the amount due as a penalty, and if the permittee fails to file the report or pay the tax within 30 days after the day the tax or report is due, the permittee is required to pay an additional five percent of the amount due as an additional penalty.

(d) Requires a permittee who fails to file a report as required by this subchapter, rather than by this chapter, in addition to any other penalty authorized by this section (Failure to Pay Tax or File Report), to pay a penalty of \$50.

SECTION 9. Transfers Section 183.053, Tax Code, to Subchapter B, Chapter 183, Tax Code, redesignates it as Section 183.025, Tax Code, and amends it as follows:

Sec. 183.025. SECURITY REQUIREMENT. (a) Requires that a permittee subject to the tax imposed by this subchapter, rather than by this chapter, comply with the security requirements imposed by Chapter 151 except that a permittee is not required to comply with Section 151.253(b) (relating to requiring the comptroller of public accounts of the State of Texas (comptroller) to fix the amount of security required in each case, taking into consideration certain factors).

(b) Requires that the total of bonds, certificates of deposit, letters of credit, or other security determined to be sufficient by the comptroller of a permittee subject to the tax imposed by this subchapter, rather than by this chapter, be in an amount that the comptroller determines to be sufficient to protect the fiscal interests of the state.

SECTION 10. Transfers Section 183.054, Tax Code, to Subchapter B, Chapter 183, Tax Code, redesignates it as Section 183.026, Tax Code, and amends it to require the comptroller to have the discretion to determine the frequency of mixed beverage tax audits under this subchapter.

SECTION 11. Transfers Section 183.055, Tax Code, to Subchapter B, Chapter 183, Tax Code, redesignates it as Section 183.027, Tax Code, and amends it as follows:

Sec. 183.027. CREDITS AND REFUNDS FOR BAD DEBTS. (a) Authorizes a permittee to withhold the payment of the tax under this subchapter on a portion of the gross receipts that remains unpaid by a purchaser under certain circumstances.

(b)-(c) Makes no change to these subsections.

SECTION 12. Amends Chapter 183, Tax Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. MIXED BEVERAGE SALES TAX

Sec. 183.041. TAX IMPOSED ON SALES OF MIXED BEVERAGES AND RELATED ITEMS. (a) Imposes a tax each mixed beverage sold, prepared, or served by a permittee in this state and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee in this state for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

(b) Provides that the rate of the tax is 8.25 percent of the sales price of the item sold, prepared, or served.

Sec. 183.042. DISCLOSURE OF TAX. Authorizes a permittee to provide that a sales invoice, billing, service check, ticket, or other receipt to a customer for the purchase of an item subject to taxation under this subchapter include:

- (1) a statement that mixed beverage sales tax is included in the sales price;
- (2) a separate statement of the amount of tax imposed under this subchapter on that item;
- (3) a statement of the mixed beverage taxes, consisting of the combined amount of the tax to be paid by the permittee under Subchapter B in relation to that item and the amount of tax imposed under this subchapter on that item; or
- (4) a statement of the combined amount of taxes imposed under this subchapter and Chapter 151 on all items listed on the invoice, billing, service check, ticket, or other receipt.

Sec. 183.043. APPLICABILITY OF OTHER LAW. (a) Provides that except as otherwise provided by this section:

- (1) the tax imposed by this subchapter is administered, collected, and enforced in the same manner as the tax under Chapter 151 is administered, collected, and enforced; and
- (2) Chapter 151 applies to the tax imposed by this subchapter in the same manner as Chapter 151 applies to the tax imposed under Section 151.051 (Sales Tax Imposed).

(b) Provides that Sections 151.423 (Reimbursement to Taxpayer for Tax Collections) and 151.424 (Discount for Prepayments) do not apply to the tax imposed by this subchapter.

(c) Provides that a sale to a permittee of an item described by Section 183.021 is not a sale for resale for purposes of Section 151.302 (Sales for Resale) if the item is mixed with or becomes a component part of a mixed beverage subject to taxation under this subchapter that is served without any consideration paid to the permittee.

(d) Exempts an item subject to tax under this subchapter from the taxes imposed under Subtitle C (Local Sales and Use Tax), Title 3 (Local Taxation).

SECTION 13. Amends Section 183.051, Tax Code, as effective September 1, 2013, as follows:

Sec. 183.051. MIXED BEVERAGE TAX CLEARANCE FUND. (a) Requires the comptroller, not later than the last day of the month following a calendar quarter, to calculate the total amount of taxes received under Subchapters B and B-1 during the quarter from permittees outside an incorporated municipality within each county and the total amount received from permittees within each incorporated municipality in each county.

(b) Requires the comptroller to issue to each county described in Subsection (a) a warrant drawn on the general revenue fund in an amount appropriated by the legislature that is prohibited from being less than 10.7143 percent of the taxes received, rather than less than 10.7143 percent of receipts, from permittees within the county during the quarter and requires the comptroller to issue to each incorporated municipality described in Subsection (a) a warrant drawn on that fund in an amount appropriated by the legislature that is prohibited from being less than 10.7143 percent of the taxes received, rather than less than 10.7143 percent of receipts, from permittees within the incorporated municipality during the quarter.

SECTION 14. Amends Section 183.052, Tax Code, to make nonsubstantive changes.

SECTION 15. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that that liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 16. Effective date: January 1, 2014.