

BILL ANALYSIS

Senate Research Center

S.B. 1396
By: West
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 163 would impose a limited tax on the sale or use of aircraft in this state. The chapter eliminates the double taxation of aircraft leases. In addition, the chapter closes tax loopholes for aircraft purchased outside of this state for use in Texas and the use of the sale for resale exemption to lease the aircraft to a related entity in a non-arms-length transaction.

Chapter 163 would ensure that a purchaser only owes tax once on an aircraft in this state. Under current law, the initial purchase of an aircraft is often taxable – and tax is due again on the subsequent lease or rental of the aircraft, even when those leases or rentals are made to affiliated entities or are necessary to comply with federal regulations. Under Chapter 163, sales tax would be imposed on the initial purchase of aircraft in this state, but no tax would be due on subsequent leases or rentals. Transfers of the aircraft between members of an affiliated group would also be tax-free.

A corresponding use tax would be imposed on aircraft purchased out of state for use in Texas. As under current law, aircraft used outside of Texas for a year and then brought into the state would be exempt. To address the use of transitory entities and sham transactions to avoid Texas tax, the proposed chapter would make the purchaser of an aircraft and the person who brings the aircraft into this state jointly and severally liable for the tax if the two are related or affiliated.

The proposed chapter preserves all of the tax exemptions currently provided in Chapter 151 (Limited Sales, Excise, and Use Tax):

- Aircraft brought into this state to be remodeled, repaired, maintained, or restored would not be subject to use tax in this state;
- a sale for resale exemption would allow aircraft dealers to purchase aircraft for resale tax-free;
- the trade-in allowance would be preserved for taxpayers purchasing new aircraft;
- an occasional sale exemption would be created for sales of aircraft by individuals for less than \$200,000;
- certificated carriers (meaning carriers authorized by the Federal Aviation Administration to operate under Part 121, 125 or 135 of the FAR) would be able to purchase aircraft tax-free; and
- the fly-away exemption and exemption for agricultural use would be preserved.

As proposed, S.B. 1396 amends current law relating to the tax on the sale and use of aircraft; imposes a tax, and provides civil and criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 4 (Section 163.006, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.308(a), Tax Code, to provide that aircraft as taxed by Chapter 163 are exempted from the taxes imposed by this chapter.

SECTION 2. Amends Section 151.3111(b), Tax Code, to provide that Subsection (a) does not apply to the performance of a service on aircraft as defined, taxed, or exempted under Chapter 163, and make nonsubstantive changes.

SECTION 3. Amends Sections 151.328(a), (b), (d), and (e), Tax Code, as follows:

(a) Defines in this section "aircraft" and "certificated carrier."

Deletes existing text providing that aircraft are exempted from taxes imposed by this chapter if certain criteria applies and sets forth such criteria.

(b) Provides that repair, remodeling, and maintenance services to aircraft, including an engine or other component part of aircraft, that are exempted from tax under Section 163.201, 163.202, 163.206 or 163.207, are exempted from the taxes imposed by this chapter, rather than providing that repair, remodeling, and maintenance services to aircraft, including an engine or other component part of aircraft operated by a person described by Subsection (a)(1), (a)(2), or (a)(5) are exempted from the taxes imposed by this chapter.

(d) Provides that machinery, tools, supplies, and equipment used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts by or on behalf of a certificated carrier or a person described by Section 163.202, rather than aircraft component parts by or on behalf of a person described by Subsection (a)(1) or (a)(2), are exempted from the taxes imposed by this chapter.

(e) Provides that tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a certificated carrier or a person described by Section 163.202, rather than owned or operated by a person described by Subsection (a)(1) or (a)(2), or that is necessary for the normal operations of the aircraft and is pumped, poured, or otherwise placed in the aircraft, is exempted from the taxes imposed by this chapter.

SECTION 4. Amends Subtitle E, Title 2, Tax Code, by adding Chapter 163, as follows:

CHAPTER 163. TAXES ON SALE AND USE OF AIRCRAFT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 163.001. DEFINITIONS. Defines, in this chapter: "affiliate," "agricultural use," "aircraft," "aircraft dealer," "certificated carrier," "flight time," "in this state," "sale for resale," and "seller."

Sec. 163.002. SALE. (a) Defines "sale."

(b) Provides that "sale" includes an installment or credit sale, an exchange of property for property or money, an exchange in which property is transferred but the seller retains title to the property as security for payment of the purchase price, and any other closed transaction described by Subsection (a).

(c) Provides that "sale" does not include a rental or an operating lease.

Sec. 163.003. TOTAL CONSIDERATION. (a) Defines "total consideration."

(b) Provides that "total consideration" does not include an amount separately stated on the bill or contract for a cash discount or manufacturer's rebate, the amount charged for an aircraft returned by a purchaser if the total amount charged is refunded by cash or credit, a financing, carrying, or service charge or interest on credit extended on the aircraft sold under a conditional sale or other deferred payment contract, or the value of an aircraft taken by an aircraft dealer as all or part of the consideration for sale of the item.

Sec. 163.004. USE. (a) Defines "use," except as provided by Subsections (b) and (c).

(b) Provides that "use" includes leasing or renting an aircraft to another person, transferring possession or control of an aircraft to another person through a management agreement or other agreement, and storing, parking, housing, hangaring, or otherwise attaching or tying down an aircraft on an airport apron, parking ramp, or other location used to secure aircraft.

(c) Provides that "use" does not include the storage, retention, demonstration, or display of an aircraft held exclusively for sale by an aircraft dealer, or the sale of an aircraft in the normal course of business.

(d) Provides that for purposes of this chapter, an aircraft is not used during any period in which the aircraft is being manufactured, completed, repaired, remodeled, or restored.

Sec. 163.005. DUTIES OF COMPTROLLER. Requires the comptroller of public accounts of the State of Texas (comptroller) to collect the taxes imposed by this subchapter as provided by Chapter 111 (Collection Procedures).

Sec. 163.006. RULES. Authorizes the comptroller to adopt any rules to implement this chapter.

Sec. 163.007. APPLICABILITY OF OTHER LAW. (a) Provides that this chapter controls over Chapter 151 (Limited Sales, Excise, and Use Tax) to the extent of any conflict.

(b) Provides that a reference in this chapter to a provision of federal law means that law as it existed on January 1, 2015.

SUBCHAPTER B. IMPOSITION AND COLLECTION OF SALES TAX

Sec. 163.021. SALES TAX IMPOSED. (a) Provides that a tax is imposed on each sale of an aircraft in this state.

(b) Provides that the rate of the tax is 6.25 percent of the total consideration.

Sec. 163.022. COLLECTION BY SELLER. Requires a seller who makes a sale subject to the tax imposed by this chapter to add the amount of the tax to the sales price, and provides that when the amount of the tax is added it becomes part of the sales price, it is a debt of the purchaser to the seller until paid, and if unpaid, it is recoverable at law in the same manner as the original sales price.

Sec. 163.023. GROSS RECEIPTS PRESUMED SUBJECT TO TAX. (a) Provides that all gross receipts of a seller are presumed to be subject to the sales tax under this subchapter unless the seller accepts a properly completed resale or exemption certificate as provided by this section.

(b) Provides that a sale is exempt if the seller receives in good faith from an aircraft dealer a resale certificate stating that the aircraft is acquired for the purpose of selling the aircraft in the normal course of business.

(c) Provides that a sale is exempt if the seller receives in good faith from a purchaser an exemption certificate that states the qualifications for an exemption under Subchapter F.

(d) Provides that a seller should have possession of a properly completed resale or exemption certificate at the time the sale occurs. Requires the comptroller to disallow a deduction from the seller's gross receipts if the seller does not deliver to the comptroller a resale or exemption certificate on which the deduction is based not later than the 60th day after the date the comptroller gives the seller written notice requiring the seller to deliver the certificate. Authorizes the comptroller to verify the reason or basis for the exemption claimed in the certificate before allowing a deduction from the seller's gross receipts based on the certificate if the seller delivers the certificate to the comptroller before the 60th day after the date the comptroller gives written notice.

Sec. 163.024. PROCEEDINGS AGAINST PURCHASER. Authorizes the comptroller to proceed against the purchaser for the amount of a tax imposed by this subchapter but not paid by the purchaser.

SUBCHAPTER C. IMPOSITION AND COLLECTION OF USE TAX

Sec. 163.051. USE TAX ON AIRCRAFT USED IN THIS STATE. (a) Provides that, except as provided by Subsection (b), a use tax is imposed on the use in this state of an aircraft brought into this state for use and regularly based in this state.

(b) Provides that the tax does not apply to an aircraft brought into this state by a person who has used the aircraft outside of this state for a period of at least one year if during that year the aircraft was not regularly based in this state, and more than 50 percent of this aircraft's flight time was outside of this state.

(c) Provides that the rate of the tax is 6.25 percent of the total consideration paid or, if the aircraft was not purchased by the person using the aircraft in this state, of the fair market value of the aircraft.

(d) Provides that a person who purchases an aircraft outside of this state and transfers possession of the aircraft to another person for use in this state through an operating lease, management agreement, or other agreement uses the aircraft in this state, and is subject to tax under this section.

Sec. 163.052. USE TAX ON AIRCRAFT BROUGHT BACK INTO THIS STATE. (a) Provides that except as provided by Subsection (b), a use tax is imposed on the purchaser of an aircraft that was purchased tax-free under Section 163.205 and that is brought back into this state for use in this state.

(b) Provides that the tax does not apply to an aircraft brought into this state by a person who used the aircraft outside of this state for a period of at least one year if during that year the aircraft was not regularly based in this state, and more than 50 percent of the aircraft's flight time was outside of this state.

(c) Provides that the tax is imposed at the time the aircraft is first used in this state.

(d) Provides that the rate of the tax is 6.25 percent of the total consideration.

(e) Provides that a person is entitled to a credit against the tax for any sales or use tax paid to another state before the aircraft was brought back into this state for use.

Sec. 163.053. REGULARLY BASED IN THIS STATE. Provides that, for purposes of Sections 163.051 and 163.052, an aircraft is regularly based in this state if the owner of

the aircraft registers the aircraft with the Federal Aviation Administration (FAA) or another taxing authority using an address in this state, the aircraft is used in this state more than in any other state, or the aircraft is used in this state more than 90 days in a calendar year.

Sec. 163.054. USER LIABLE FOR TAX. (a) Provides that the use tax imposed under this subchapter is an obligation of and is required to be paid by the person who uses the aircraft in this state.

(b) Provides that the purchaser and the person who brings an aircraft into this state for use are jointly and severally liable for the use tax imposed under this subchapter if the person who brings the aircraft into this state for use is an affiliate of the purchaser, or directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the purchaser.

(c) Provides that except as provided by Subsection (d), liability for the use tax imposed under this subchapter continues until the tax is paid to this state.

(d) Provides that a person is not further liable for the use tax imposed under this subchapter if the person pays the tax to a seller engaged in business in this state, as provided by Section 151.107 (Retailer Engaged in Business in this State), or to another person authorized by the comptroller to collect the tax and the person receives from the seller or that other person a purchaser's receipt issued in the form and manner prescribed by the comptroller.

Sec. 163.055. SELLER ENGAGED IN BUSINESS IN THIS STATE. Requires a seller engaged in business in this state, as provided by Section 151.107, who makes a sale of an aircraft for use in this state to collect the use tax due from the purchaser and give the purchaser a receipt for the payment.

SUBCHAPTER D. RESALE AND EXEMPTION CERTIFICATES

Sec. 163.101. RESALE CERTIFICATE. Authorizes an aircraft dealer to give a resale certificate for the acquisition of an aircraft if the aircraft dealer intends to sell the aircraft in the normal course of business.

Sec. 163.102. RESALE CERTIFICATE: FORM. Requires a resale certificate to be signed by the aircraft dealer or contain an electronic form of the aircraft dealer's signature authorized by the comptroller and contain the aircraft dealer's name and address, state the aircraft dealer's tax permit number or that the aircraft dealer's application for a tax permit is pending before the comptroller, and identify the aircraft purchased by means of the aircraft's serial number and Federal Aviation Administration registry number.

Sec. 163.103. RESALE CERTIFICATE: LIABILITY OF PURCHASER. Provides that if an aircraft dealer who gives a resale certificate for an aircraft subsequently uses the aircraft, the aircraft dealer is liable for payment of the sales tax on the original purchase price of the aircraft.

Sec. 163.104. EXEMPTION CERTIFICATE: FORM. Requires an exemption certificate to be signed by the purchaser or contain an electronic form of the purchaser's signature authorized by the comptroller and contain the purchaser's name and address; state the reason the purchase is exempt from tax; if the purchase is exempted under Section 163.201 or 163.202, include the number of the certificate issued by the FAA to the purchaser; and identify the aircraft purchased by means of the aircraft's serial number and FAA registry number.

Sec. 163.105. EXEMPTION CERTIFICATE: LIABILITY OF PURCHASER. Provides that a purchaser is liable for the payment of the sales tax on the original purchase price of an aircraft if the purchaser certifies in writing to a seller that the aircraft will be used in a manner or for a purpose that qualifies for an exemption from the taxes imposed by this

chapter, and uses the aircraft in a manner or for a purpose other than the manner or purpose described by Subdivision (1) (certifying exemption use in writing).

SUBCHAPTER E. ADMINISTRATION AND RECORDS

Sec. 163.151. REGISTRATION OF SELLERS. (a) Requires a seller who sells an aircraft in this state to register with the comptroller in the same manner as is required of a seller under Subchapter F (Sales Tax Permits), Chapter 151.

(b) Requires a seller who is engaged in business in this state, as provided by Section 151.107, and sells an aircraft for use in this state to register with the comptroller in the same manner as is required of a seller under Subchapter F, Chapter 151.

Sec. 163.152. REPORTS, PAYMENTS, AND METHODS OF REPORTING. Requires the seller of an aircraft to, except as inconsistent with this chapter and rules adopted under this chapter, report and pay to the comptroller the tax imposed under this chapter on the seller's receipts from the sale of aircraft in the same manner as the sales and use tax is reported and paid by a retailer under Sections 151.401 (Tax Due Dates), 151.402 (Tax Report Dates), 151.403 (Who Must File a 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), 151.423 (Reimbursement To Taxpayer for Tax Collections), 151.424 (Discount for Prepayments), 151.425 (Forfeiture of Discount or Reimbursement), and 151.426 (Credits and Refunds for Bad Debts, Returned Merchandise, and Repossessions).

Sec. 163.153. RECORDS. (a) Requires a seller or a person using an aircraft in this state to keep the following records in the form the comptroller requires:

(1) records of all gross receipts, including documentation in the form of receipts, shipping manifests, invoices, and other pertinent papers, from each sale occurring during each reporting period;

(2) records in the form of receipts, shipping manifests, invoices, and other pertinent papers that substantiate each claimed deduction or exclusion authorized by law; and

(3) records in the form of sales receipts, invoices, or other equivalent records showing all sales and use tax, and any money represented to be sales and use tax, received or collect on each sale during each reporting period.

(b) Requires that a record required by Subsection (a) be kept for not less than four years from the date the record is made unless the comptroller authorizes in writing destruction of the record at an earlier date, or Section 111.0041 (Records; Burden to Produce and Substantiate Claims) requires the record to be kept for a longer period.

Sec. 163.154. NON-PERMITTED PURCHASERS. Requires a person who is not registered with the comptroller under Subchapter F, Chapter 151, to report and pay sales or use tax that is due on the purchase of an aircraft in the manner the comptroller requires when the tax is not collected by the seller.

SUBCHAPTER F. EXEMPTIONS

Sec. 163.201. CERTIFICATED CARRIERS. Provides that an aircraft is exempted from the taxes imposed by this chapter if the aircraft is sold to a certificated carrier, identified in the certificated carrier's operations specifications as required by 14 C.F.R. Part 119, and flown exclusively under the operational control of the certificated carrier to transport persons or property for hire.

Sec. 163.202. FLIGHT SCHOOLS AND INSTRUCTORS. (a) Provides that an aircraft is exempted from the taxes imposed by this chapter if the aircraft is sold to a person who

(1) holds a flight school or flight instructor certificate issued by the FAA; and

(2) uses the aircraft for the exclusive purpose of providing flight instruction that is recognized by the FAA, under the direct or general supervision of a flight instructor certified by the FAA, and designed to lead to a pilot certificate or rating issued by the FAA or otherwise required by a rule or regulation of the FAA.

(b) Provides that, for purposes of this section, an aircraft is considered to be used for the exclusive purpose of providing flight instruction if 95 percent of the use of the aircraft is for a purpose described by Subsection (a)(2).

(c) Requires a person who claims an exemption under this section to maintain and make available to the comptroller flight records and passenger lists for all uses of the aircraft.

Sec. 163.203. GOVERNMENTAL ENTITIES. Provides that an aircraft is exempted from the taxes imposed by this chapter if the aircraft is sold to a person who is a foreign government, or a governmental entity listed in Section 151.309 (Governmental Entities).

Sec. 163.204. RELIGIOUS, EDUCATIONAL, AND PUBLIC SERVICE ORGANIZATIONS. (a) Provides that an aircraft sold to 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 and the aircraft is related to the purpose of the organization;

(2) an organization qualifying for an exemption from federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (8), (10), or (19), if the use of the aircraft relates to the purpose of the exempted organization and the aircraft 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 aircraft is used exclusively by the company, department, or association.

(b) Provides that for purposes of obtaining a refund of or claiming a credit for taxes paid under this chapter on the basis of an exemption under this section, an organization is not eligible for an exemption from the taxes imposed by this chapter before the earlier of the date the organization applied for the exemption with the comptroller, or the date of assessment of the organization's tax liability by the comptroller as a result of an audit, as applicable.

Sec. 163.205. OUT-OF-STATE REGISTRATION AND USE. (a) Provides that an aircraft is exempted from the taxes imposed by this chapter if the aircraft is sold in this state to a person for use and registration in another state or nation before any use in this

state other than flight training in the aircraft and the transportation of the aircraft out of this state.

(b) Requires the person purchasing the aircraft, to qualify for the exemption, to sign at the time of purchase an exemption certificate that is designated as an exemption certificate for the purchase of an aircraft for out-of-state registration and use, is on a form designated by the comptroller, contains all of the information the comptroller requires, is signed by the purchaser at the time of purchase, and provides that the purchaser, by signing the certificate, authorizes the comptroller to provide a copy of the certificate to the state or nation of intended use and registration.

(c) Provides that a person commits an offense if the person gives an exemption certificate required under Subsection (b) to a seller for an aircraft that the person knows, at the time of purchase, will be used in a manner other than the manner expressed in the exemption certificate or the person gives an exemption certificate with fraudulent intent or intent to wrongfully evade payment of the taxes imposed under this chapter. Provides that an offense under this subsection is a misdemeanor punishable by a fine not to exceed \$500.

Sec. 163.206. AGRICULTURAL USE. (a) Provides that an aircraft is exempted from the taxes imposed by this chapter if the aircraft is sold to a person for use exclusively in connection with an agricultural use, including predator control, wildlife or livestock capture, wildlife or livestock surveys, census counts of wildlife or livestock, animal or plant health inspection services, or crop dusting, pollination, or seeding.

(b) Provides that for purposes of this section, an aircraft is considered to be for use exclusively in connection with an agricultural use if 95 percent of the use of the aircraft is for a purpose described by Subsection (a). Provides that travel from an aircraft's home base of operations to a location to perform a service described by Subsection (a) does not disqualify an aircraft from the exemption under this section.

(c) Requires a person who claims an exemption under this section to maintain and make available to the comptroller flight records for all uses of the aircraft.

Sec. 163.207. SALE FOR RESALE. Provides that a sale for resale as defined by Section 163.001 is exempted from the taxes imposed by this chapter.

Sec. 163.208. PREVIOUSLY TAXED AIRCRAFT: USE TAX EXEMPTION OR CREDIT. (a) Provides that the use of an aircraft the sale of which is subject to the sales tax imposed under Subchapter B is exempted from the use tax imposed under Subchapter C.

(b) Entitles a person to a credit against the use tax imposed under Subchapter C on an aircraft in an amount equal to the amount of any similar tax legally due and paid by the person to another state or any subdivision of another state on the sale, purchase, or use of the aircraft.

Sec. 163.209. TRANSFERS OF COMMON INTEREST IN AIRCRAFT. Provides that if an interest in an aircraft 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 aircraft with the seller, and if all applicable taxes imposed by this chapter have previously been paid on the aircraft, the aircraft is exempted from the taxes imposed by this chapter.

Sec. 163.210. TRANSFERS AMONG AFFILIATES. Provides that the sale of an aircraft, including the contribution, distribution, or other transfer of the aircraft, to an affiliate of the seller is exempted from the taxes imposed by this chapter if the ultimate ownership of

the aircraft remains unchanged and all applicable taxes imposed by this chapter were previously paid by the seller or an affiliate of the seller.

Sec. 163.211. EXEMPTIONS REQUIRED BY PREVAILING LAW. Provides that an aircraft that this state is prohibited from taxing by the law of the United States, the Constitution of the United States, or the Texas Constitution is exempted from the taxes imposed by this chapter.

Sec. 163.212. SALES BY OR TO INDIAN TRIBES. Provides that an aircraft sold, leased, or rented to, or stored, used, or consumed by, a tribal council or a business owned by a tribal council of the Alabama-Coushatta Indian Tribe, the Tigua Indian Tribe, or the Texas Band of Kickapoo Indians is exempted from the taxes imposed by this chapter.

Sec. 163.213. OCCASIONAL SALES. (a) Provides that an occasional sale of an aircraft and the use of a single aircraft that is acquired by means of an occasional sale are exempted from the taxes imposed by this chapter.

(b) Defines in this section, "occasional sale."

Sec. 163.214. ELIGIBILITY FOR EXEMPTION. Provides that only the purchaser of an aircraft is eligible to claim an exemption under this subchapter. Authorizes the purchaser to qualify for an exemption based only on the purchaser's own use of the aircraft. Prohibits a purchaser who is not otherwise eligible from claiming an exemption under this subchapter on the basis that the purchaser transferred ownership or possession of the aircraft to a person who would have been eligible to claim an exemption if that person had purchased the aircraft.

SUBCHAPTER G. PENALTIES

Sec. 163.301. PROHIBITED ACTS AND CIVIL AND CRIMINAL PENALTIES. Provides that the provisions of Subchapter L (Prohibited Acts and Civil and Criminal Penalties), Chapter 151, apply to the taxes imposed under this chapter.

SECTION 5. Amends Section 321.002(a), Tax Code, by adding Subdivision (4) to define "taxable item."

SECTION 6. Amends Section 321.003, Tax Code, as follows:

Sec. 321.003. OTHER PORTIONS OF TAX APPLICABLE. Adds Chapter 163 to a list of subtitles and chapters that apply to the taxes and to the administration and enforcement of the taxes imposed by this chapter in the same manner that those laws apply to state taxes, unless modified by this chapter, and makes a nonsubstantive change.

SECTION 7. Amends Section 321.201(a), Tax Code, to require each retailer in a municipality that has adopted a tax authorized by this chapter to add each sales tax imposed by the municipality under this chapter and by Chapter 151 or 163 to the sales price, and the sum of the taxes is a part of the price, a debt of the purchaser to the retailer until paid, and recoverable at law in the same manner as the purchase price. Provides that if the municipality imposes the tax on gas and electricity for residential use, only the municipal tax is added to the sales price of sales of gas and electricity for residential use.

SECTION 8. Amends Section 321.204(a), Tax Code, to provide that in each municipality that has adopted the taxes authorized by this chapter, the taxes imposed by Section 321.104(a) (relating to the applicability of the use tax) and the tax imposed by Subchapter D (Imposition and Collection of Use Tax), Chapter 151, or Subchapter C, Chapter 163, are added together to form a single combined tax rate, with certain exceptions as set forth.

SECTION 9. Amends Section 321.205(a), Tax Code, to provide that in determining the incidence of the use tax authorized by this chapter the name of the municipality adopting the tax

is substituted in Subchapter D, Chapter 151, or Subchapter C, Chapter 163, for "this state" where those words are used to designate the taxing entity or delimit the tax imposed.

SECTION 10. Amends Sections 321.207(a) and (b), Tax Code, as follows:

(a) Provides that the sales tax authorized by this chapter does not apply to the sale of a taxable item unless the sales tax imposed by Subchapter C, Chapter 151, or Subchapter B, Chapter 163, also applies to the sale.

(b) Provides that the excise tax authorized by this chapter on the use, storage, or consumption of a taxable item does not apply to the use, storage, or consumption of a taxable item unless the tax imposed by Subchapter D, Chapter 151, or Subchapter C, Chapter 163, also applies to the use, storage, or consumption.

SECTION 11. Amends Section 321.208, Tax Code, as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. Provides that the exemptions provided by Subchapter H (Exemptions), Chapter 151, and Subchapter F, Chapter 163, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) (relating to an exemption in this section not applying to taxes imposed under Chapter 321, 322, or 323) and 151.317(b) (relating to usage tax on gas and electricity).

SECTION 12. Amends Section 321.301, Tax Code, as follows:

Sec. 321.301. COMPTROLLER TO COLLECT AND ADMINISTER TAXES. Requires the comptroller to administer, collect, and enforce any tax imposed by a municipality under this chapter. Requires that the taxes imposed under this chapter and the taxes imposed under Chapters 151 and 163 be collected together, if taxes are imposed under more than one chapter. Makes nonsubstantive changes.

SECTION 13. Amends Section 321.302(b), Tax Code, to require the comptroller to, if a municipality requests an additional report, make an additional quarterly report to the municipality including the name, address, and account number, if any, of, and the amount of tax due from, each person doing business in the municipality who has failed to pay the tax under this chapter to the municipality or under Chapter 151 or 163.

SECTION 14. Amends Section 321.303(b), Tax Code, as follows:

(b) Provides that, except as otherwise provided by this section for aircraft, the same sales tax permit, exemption certificate, and resale certificate required by Chapter 151 for the administration and collection of the taxes imposed by that chapter satisfy the requirements of this chapter. Provides that, for aircraft, as defined by Section 163.001, the same exemption certificate and resale certificate required by Chapter 163 for the administration and collection of the taxes imposed by that chapter satisfy the requirements of this chapter. Prohibits any additional permit or exemption or resale certificate from being required except that the comptroller is authorized to prescribe a separate exemption certificate form for the transition exemption for prior contracts and bids under Section 321.209 (Transition Exemption: General Purpose Sales and Use Tax).

SECTION 15. Amends Section 321.308, Tax Code, as follows:

Sec. 321.308. SEIZURE AND SALE OF PROPERTY. Requires the comptroller to sell sufficient property to pay the delinquent taxes and penalties of both taxes, if the comptroller lawfully seizes property for the payment of the taxes imposed under Chapter 151 or 163 and the property owner is delinquent in the payment of taxes under this chapter.

SECTION 16. Amends Section 321.310(a), Tax Code, to authorize the comptroller or the attorney general to disapprove of the institution of a suit by a municipality under Section

321.309(b) (relating to when a municipality may bring suit for tax collection) if the state will bring suit against the taxpayer for all taxes due under Chapter 151 or 163 and this chapter.

SECTION 17. Amends Section 322.101, Tax Code, as follows:

Sec. 322.101. SALES TAX. Provides that there is imposed in a taxing entity a sales tax at the rate authorized and set as provided by the law authorizing the creation of the taxing entity and applied to the receipts from the sale within the entity area of all taxable items that are subject to the sales tax under Chapter 151 or 163.

SECTION 18. Amends Section 322.103(a), Tax Code, to require each retailer in an entity area to add the sales tax imposed under this chapter, the sales taxes imposed under Chapter 151 or 163, and, if applicable, any sales taxes imposed under Chapter 321 (Municipal Sales and Use Tax Act) or 323 (County Sales and Use Tax Act) to the sales price, and the sum of the taxes is a part of the price, a debt of the purchaser to the retailer until paid, and recoverable at law in the same manner as the purchase price.

SECTION 19. Amends Section 322.104(a), Tax Code, to provide that, in each taxing entity the tax imposed by Subchapter D, Chapter 151, the taxes imposed by Subchapter C, Chapter 163, the tax imposed under Section 321.104(a), if applicable, and the tax imposed under Section 322.102 (Use Tax) are added together to form a single combined tax rate, except in a situation described by Section 322.105(b) (relating to taxable items being subject to use taxes).

SECTION 20. Amends Section 322.105(a), Tax Code, to provide that in determining the incidence of the use tax of a taxing entity, the name of the taxing entity is substituted in Subchapter D, Chapter 151, and Subchapter C, Chapter 163, for "this state" where those words are used to designate the taxing entity or delimit the tax imposed.

SECTION 21. Amends Sections 322.106(a) and (b), Tax Code, as follows:

(a) Provides that the sales tax of a taxing entity does not apply to the sale of a taxable item unless the sales tax imposed under Subchapter C, Chapter 151, or Subchapter B, Chapter 163, also applies to the sale.

(b) Provides that the excise tax of a taxing entity on the use, storage, or consumption of a taxable item does not apply to the use, storage, or consumption of an item unless the tax imposed by Subchapter D, Chapter 151, or Subchapter C, Chapter 163, also applies to the use, storage, or consumption of the item.

SECTION 22. Amends Section 322.201(b), Tax Code, to require the sales and use taxes imposed under this chapter, the taxes imposed under Chapters 321 and 323, and the taxes imposed under Chapters 151 and 163 to be collected together to the extent that each is imposed in an entity area, and makes nonsubstantive changes.

SECTION 23. Amends Section 322.205(a), Tax Code, to require the comptroller to sell sufficient property to pay the delinquent taxes and penalties under this chapter, Chapter 151, Chapter 163, and Chapter 321 if the comptroller lawfully seizes property for the payment of the taxes imposed under Chapter 151 or 163 and the property owner is delinquent in the payment of taxes under this chapter.

SECTION 24. Amends Section 322.207(a), Tax Code, as follows:

(a) Authorizes the comptroller or the attorney general to disapprove of the institution of a suit by a taxing entity under Section 322.206(b) (authorizing a taxing entity to bring suit) if:

(1) 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 taxing entity seeking to bring suit;

- (2) 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;
- (3) the state will bring suit against the taxpayer for all taxes due under Chapter 151 or 163 and this chapter; or
- (4) 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.

SECTION 25. Amends Section 323.003, Tax Code, as follows:

Sec. 323.003. OTHER PORTIONS OF TAX APPLICABLE. Adds Chapter 163 to a list of subtitles and chapters that apply to the taxes and to the administration and enforcement of the taxes imposed by this chapter in the same manner that those laws apply to state taxes, unless modified by this chapter.

SECTION 26. Amends Section 323.201(a), Tax Code, to require each retailer in a county that has adopted the tax authorized by this chapter to add the sales tax imposed by this chapter and by Chapter 151 or 163, plus any other applicable sales tax, to the sales price, and the sum of the taxes is a part of the price, a debt of the purchaser to the retailer until paid, and recoverable at law in the same manner as the purchase price.

SECTION 27. Amends Section 323.204, Tax Code, as follows:

Sec. 323.204. COMPUTATION OF USE TAX. Provides that, in each county that has adopted the taxes authorized by this chapter, the tax imposed by Section 323.104 (Use Tax), by other applicable local taxes, and by Subchapter D, Chapter 151, or Subchapter C, Chapter 163, are added together to form a single combined tax rate, except only the rate of the county tax is used in a situation described by Section 323.205(b) (relating to a county's use tax).

SECTION 28. Amends Section 323.205(a), Tax Code, to provide that in determining the incidence of the use tax authorized by this chapter, the name of the county adopting the tax is substituted in Subchapter D, Chapter 151, and Subchapter C, Chapter 163, for "this state" where those words are used to designate the taxing entity or delimit the tax imposed.

SECTION 29. Amends Sections 323.206(a) and (b), Tax Code, as follows:

(a) Provides that the sales tax authorized by this chapter does not apply to the sale of a taxable item unless the sales tax imposed by Subchapter C, Chapter 151, or Subchapter B, Chapter 163, also applies to the sale.

(b) Provides that the excise tax authorized by this chapter on the use, storage, or consumption of a taxable item does not apply to the use, storage, or consumption of an item unless the tax imposed by Subchapter D, Chapter 151, or Subchapter C, Chapter 163, also applies to the use, storage, or consumption.

SECTION 30. Amends Section 323.207, Tax Code, as follows:

Sec. 323.207. STATE EXEMPTIONS APPLICABLE. Provides that the exemptions provided by Subchapter H, Chapter 151, and Subchapter F, Chapter 163, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and 151.317(b).

SECTION 31. Amends Section 323.301, Tax Code, as follows:

Sec. 323.301. COMPTROLLER TO COLLECT AND ADMINISTER TAXES. Requires the comptroller to administer, collect, and enforce any tax imposed by a municipality under this chapter. Requires that the tax imposed under this chapter and the taxes

imposed under Chapters 151 and 163 be collected together, if taxes are imposed under more than one chapter. Makes nonsubstantive changes.

SECTION 32. Amends Section 323.302(b), Tax Code, to require the comptroller to, if the county requests an additional report, make an additional quarterly report to the county including the name, address, and account number, if any, of, and the amount of tax due from, each person doing business in the county who has failed to pay the tax under this chapter to the county or under Chapter 151 or 163.

SECTION 33. Amends Section 323.303(b), Tax Code, as follows:

(b) Provides that except as provided by this section for aircraft, the same sales tax permit, exemption certificate, and resale certificate required by Chapter 151 for the administration and collection of the taxes imposed by that chapter satisfy the requirements of this chapter. Provides that for aircraft, as defined by Section 163.001, the same exemption certificate and resale certificate required by Chapter 163 for the administration and collection of the taxes imposed by that chapter satisfy the requirements of this chapter. Provides that no additional permit or exemption or resale certificate may be required.

SECTION 34. Amends Section 323.308, Tax Code, as follows:

Sec. 323.308. SEIZURE AND SALE OF PROPERTY. Requires the comptroller to sell sufficient property to pay the delinquent taxes and penalties of both taxes, if the comptroller lawfully seizes property for the payment of the taxes imposed under Chapter 151 or 163 and the property owner is delinquent in the payment of taxes under this chapter.

SECTION 35. Amends Section 323.310(a), Tax Code, to authorize the comptroller or the attorney general to disapprove of the institution of a suit by a county under Section 323.309(b) (authorizing a county to bring suit for taxes owed) if the state will bring suit against the taxpayer for all taxes due under Chapter 151 or 163 and this chapter.

SECTION 36. Repealers: Sections 151.328(c) (defining aircraft), (f) (relating to qualifying exemptions), (g) (relating to a person committing an offense if the person knowingly gives an exemption certificate to a buyer with fraudulent intent), and (h) (relating to an aircraft considered to be used exclusively for agriculture), Tax Code.

SECTION 37. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Makes application of this Act prospective.

SECTION 38. Effective date: September 1, 2015.