

BILL ANALYSIS

Senate Research Center
77R11019 CBH-F

C.S.S.B. 1123
By: Armbrister
Finance
3/29/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

C.S.S.B. 1123 updates the administration of the State's tax laws to ensure that collection of taxes are complete.

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 Article 2.12, Code of Criminal Procedure, as amended by Chapters 90, 332, 882, and 974, Acts of the 76th Legislature, Regular Session, 1999, as follows:

- (1) Changes reference from Chapter 415, Government Code, to Chapter 1701, Occupations Code.
- (2) Makes a conforming change.
- (3) Makes a conforming change.
- (11) Deletes phrase "according to the most recent federal census."
- (14) Adds investigators commissioned by the comptroller to those who are peace officers.
- (16) Changes reference from "Chapter 341, Acts of the 57th Legislature, Regular Session, 1961, Article 1187f, V.T.C.S.," to "Chapter 54, Transportation Code."
- (21) Changes officers commissioned "by the State Board of Pharmacy" to officers commissioned "under Chapter 554, Occupations Code," regarding who are peace officers.
- (31) Changes reference from "415.016, Government Code" to "Chapter 1701.160, Occupations Code."
- (32) Changes reference from "Section 10(f), Private Investigators and Private Security Agencies Act (Article 4413(29bb), V.T.C.S.," to "Section 1702.061(f), Occupations Code," and changes reference from "board" to "commission."

SECTION 2. Amends Section 411.109, Government Code, as follows:

- (a) Adds reference to Chapters 151 (Limited Sales, Excise, and Use Tax), 152 (Taxes on Sale, Rental, and Use of Motor Vehicles), and 153 (Motor Fuel Taxes), Tax Code, regarding certain information the comptroller is entitled to request that the comptroller believes is necessary to

enforce and administer certain chapters of the Tax Code. Makes conforming changes.

(c) Entitles the comptroller to obtain from the Department of Public Safety of the State of Texas (department) criminal history record information maintained by the department that the comptroller believes is necessary for the enforcement of Chapter 159 (Controlled Substances Tax), Tax Code.

(d) Makes a conforming change.

SECTION 3. Amends Section 111.020, Tax Code, by adding Subsection (f), to provide that compliance with Subsection (a) is not a defense to an assessment of tax liability under Section 111.024 under certain conditions.

SECTION 4. Amends Sections 111.021(a) and (c), Tax Code, as follows:

(a) Authorizes the comptroller, if a person is delinquent in the payment of an amount required to be paid or has not paid an amount claimed in a determination made against the person, to notify personally, by mail, or by means of facsimile or electronic transmission any other person who meets certain criteria.

(c) Adds language to require a notice under this section to state an additional amount of penalties and interest that will accrue by operation of law in a period not to exceed 30 days and, in the case of a credit, bank or savings account deposit, is effective only up to that amount.

SECTION 5. Amends Section 111.022 (a), Tax Code to require the comptroller, if the comptroller believes that the collection of a tax required to be paid to the state or the amount due for a tax period is jeopardized by delay, to issue a determination stating the amount and that the tax collection is in jeopardy. Provides that the amount required to be paid to the state or due for the tax period is due and payable immediately.

SECTION 6. Amends Chapter 111A, Tax Code, by adding Section 111.024, as follows:

Sec. 111.024. LIABILITY IN FRAUDULENT TRANSFERS. (a) Provides that a person who acquires a business or the assets of a business from a taxpayer through a fraudulent transfer or a sham transaction is liable for any tax, penalty, and interest owed by the taxpayer.

(b) Provides that a transfer of a business or the assets of a business is considered to be a fraudulent transfer or a sham transaction if the taxpayer made the transfer or undertook the transaction under certain conditions.

(c) Authorizes consideration to be given in determining the intent of the taxpayer under Subsection (b)(1), among other factors, to whether certain conditions regarding the transfer were met.

(d) Provides that this section does not apply to a transfer of a business or the assets of a business through a court order on dissolution of a marriage or by descent or distribution or testate succession on the death of a taxpayer.

SECTION 7. Amends Section 113.009, Tax Code, by adding Subsection (c), to prohibit a state tax lien filed under this chapter from being released fully until the taxpayer pays all other taxes, penalties, interest, fees, or sums that the taxpayer owes the state and that are administered or collected by the comptroller.

SECTION 8. Amends Section 113.105(b), Tax Code, to provide that the state tax lien on personal property and real estate attaches to personal property and real estate owned by the taxpayer beginning

on the first day of the period for which, rather than on or after the date, the lien is filed by the state.

SECTION 9. Amends Section 151.023, Tax Code, as follows:

Sec. 151.023. INVESTIGATIONS AND AUDITS. (a) Authorizes the comptroller, or another person authorized by the comptroller in writing, to examine, copy, and photograph the books, records, papers, and equipment of a person who sells taxable items or of a person liable for the use tax and to investigate the character of the business of the person to verify the accuracy of the person's report or to determine the amount of tax that may be required to be paid if no report has been filed.

(b) Authorizes the comptroller or a person authorized by the comptroller to take certain actions for the purpose of determining the amount of tax collected and payable to the state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter,

SECTION 10. Amends Section 151.025(a), Tax Code, to require all sellers and all other persons storing, using, or consuming in this state a taxable item purchased from a retailer to keep certain records. Deletes language regarding receipts invoices and other pertinent papers.

SECTION 11. Amends Section 151.253(b), Tax Code, to require the comptroller to fix the amount of security required in each case, taking into consideration the amount of tax that has or is expected to become due from the person under this chapter and all other applicable local sales and use taxes and the necessity to protect the state against the failure to pay these taxes. Provides that the maximum amount of security that may be required is the greater of \$100,000 or four times the amount of the person's average monthly tax liability, rather than the lesser of \$50,000 or three times the amount of the person's average monthly tax liability.

SECTION 12. Amends Chapter 151L, Tax Code, by adding Section 151.7032 as follows:

Sec. 151.7032. FAILURE TO PAY TAXES COLLECTED; CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person intentionally or knowingly fails to pay to the comptroller, as required by this chapter, the tax collected by that person.

(b) Sets forth an ascending scale of offenses under this section.

SECTION 13. Amends Section 151.708, Tax Code, as follows:

(b) Provides that a first offense under this section is a Class C misdemeanor. Deletes language regarding penalties.

(c) Provides that, if it is shown on the trial of an offense under this section that the person or officer has previously been finally convicted of one offense under this section, on conviction the person or officer to be punished for a Class B misdemeanor punishable by a fine only, not to exceed \$2,000. Deletes language regarding a different offense occurring each day.

(d) Provides that if it is shown on the trial of an offense under this section that the person or officer has previously been finally convicted of two offenses under this section, on conviction the person or officer shall be punished for a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

(e) Provides that if it is shown on the trial of an offense under this section that the person or officer has previously been finally convicted of three or more offenses under this section, on conviction the person or officer shall be punished for a Class A misdemeanor punishable by a fine not to exceed \$4,000, confinement in jail for a term not to exceed one year, or both the fine

and confinement.

(f) Provides that each day a person or an officer of a corporation operates a business without a permit or with a suspended permit is a separate offense under this section.

SECTION 14. Amends Section 151.709, Tax Code, as follows:

Sec. 151.709. New heading: FAILURE TO FURNISH REPORT; CRIMINAL PENALTY.

(a) Deletes language regarding data.

(b) Deletes language regarding a fine of not more than \$500.

(c) Requires that if it is shown on the trial of an offense under this section that the person has previously been finally convicted of one offense under this section, on conviction the person be punished for a Class B misdemeanor punishable by a fine only, not to exceed \$2,000.

(d) Requires that if it is shown on the trial of an offense under this section that the person has previously been finally convicted of two or more offenses under this section, on conviction the person be punished for a Class A misdemeanor punishable by a fine only, not to exceed \$4,000.

SECTION 15. Amends Chapter 151L, Tax Code, by adding Sections 151.7101, 151.7102, and 151.7103, as follows:

Sec. 151.7101. ELECTION OF OFFENSES. Provides that if a violation of a criminal provision of this chapter by a taxpayer constitutes another offense under the laws of this state, the state may elect the offense for which it will prosecute the taxpayer.

Sec. 151.7102. FALSE ENTRY OR FAILURE TO ENTER IN RECORDS. (a) Provides that a person commits an offense if the person intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in records that are required to be made or kept under this chapter.

(b) Provides that an offense under this section is a felony of the third degree.

Sec. 151.7103. FAILURE TO PRODUCE FOR INSPECTION OR ALLOW INSPECTION OF RECORDS. (a) Provides that a person commits an offense if the person is asked, by a person authorized by the comptroller, to produce or allow inspection of a record required to be kept under this chapter and the person fails to produce the record or allow the inspection after the allowed time.

(b) Provides that an offense under this section is a Class C misdemeanor. Provides that each day the person fails to allow inspection of records or produce records for inspection after receiving a request is a separate offense.

SECTION 16. Amends Chapter 151L, Tax Code, by adding Section 151.714 as follows:

Sec. 151.714. VENUE FOR CRIMINAL PROSECUTION. Provides that venue for prosecution for an offense under this chapter is in certain counties.

SECTION 17. Amends Section 152.101(b), Tax Code, providing that an offense under this section is a felony of the third degree. Deletes language regarding punishment.

SECTION 18. Amends Section 152.102(b), Tax Code, to provide that an offense under this section is a Class C misdemeanor. Deletes language regarding punishment.

SECTION 19. Amends Section 152.103(b), Tax Code, to provide that an offense under this section is a Class C misdemeanor. Deletes language regarding punishment.

SECTION 20. Amends Chapter 152F, Tax Code, by adding Sections 152.104 and 152.105, as follows:

Sec. 152.104. FAILURE TO REMIT TAX COLLECTED. (a) Provides that a person who is a dealer, as defined by Section 503.001, Transportation Code, or who is acting in the capacity of a dealer, commits an offense if the person intentionally or knowingly fails to pay to the tax assessor-collector the motor vehicle sales tax collected as required by this chapter.

(b) Provides that the grade of an offense under this section is determined by certain factors.

(c) Provides that when amounts are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several resources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 152.105. VENUE FOR CRIMINAL PROSECUTIONS. Provides that venue for prosecution of any offense under this chapter is in certain counties.

SECTION 21. Amends Section 153.402(a), Tax Code, to provide that a person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person furnishes to a supplier a signed statement for purchasing diesel fuel tax free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway. Deletes language regarding legal use of diesel fuel.

SECTION 22. Amends Section 153.403, Tax Code, to provide that, except as provided by Section 153.404, a person commits an offense if the person refuses to permit the comptroller, the attorney general, an employee of either of those officials, a peace officer, an employee of the Texas Natural Resource Conservation Commission, or an employee of the Department of Agriculture to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, stored, sold, delivered, or used and furnishes to a supplier a signed statement for purchasing diesel fuel tax free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway. Deletes language regarding legal use of diesel fuel.

SECTION 23. Amends Sections 153.404(c) and (d), Tax Code, as follows:

(c) Provides that the prohibition under Section 153.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 153.203(1), (2), (5), (8), or (9).

(d) Provides that the prohibition under Section 153.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 153.104(2), (4), (7), or (8).

SECTION 24. Amends Section 183.053(b), Tax Code, to prohibit the comptroller from setting the amount of security at less than \$1,000 or more than \$50,000, rather than \$25,000.

SECTION 25. Amends Article 8.15A, Texas Business Corporation Act, to require that the original and a copy of an application for withdrawal, along with a certificate from the comptroller that all taxes, including all applicable penalties and interest, administered by the comptroller under Title 2, Tax Code, have been paid, to be delivered to the secretary of state. Makes nonsubstantive changes.

SECTION 26. Amends Article 6.08A, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to require the original and a copy of any articles of dissolution, along with a certificate from the comptroller that all taxes, including all applicable penalties and interest, administered by the

comptroller under Title 2, Tax Code, have been paid, to be delivered to the secretary of state. Makes nonsubstantive changes.

SECTION 27. Amends Article 7.10A, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to make conforming and nonsubstantive changes.

SECTION 28. Repealer: Section 151.710 (General Criminal Penalty), Tax Code.

SECTION 29. (a) Effective date: September 1, 2001.

(b) - (d) Make application of Sections 7, 8, 12 through 20, 22, and 23 of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

Amends As Filed S.B. 1123, by deleting proposed SECTION 3 and renumbering remaining SECTIONS accordingly.

Amends As Filed S.B. 1123, by only repealing Section 151.710, Tax Code, in SECTION 28.

Amends As Filed S.B. 1123, by renumbering the Sections referenced in SECTION 29 to coincide with the renumbering of the SECTIONS.