

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 934
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Transportation & Homeland Security
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The comptroller of public accounts (comptroller) is authorized by statute to employ investigators to assist in the administration of the Tax Code and to commission those investigators as peace officers. Comptroller investigators are assigned to the Criminal Investigation Division (CID) and assist in the administration of the Tax Code primarily by detecting and investigating crimes defined therein. Case actions are publicized on the agency's website to deter others contemplating tax fraud. Deterring such conduct helps ensure the state's receipt of tax revenue.

The purpose of C.S.S.B. 934 is to maximize the efficiency of the comptroller criminal investigation efforts to increase the deterrence of tax fraud.

C.S.S.B. 934 amends current law relating to the enforcement of tax laws and provides a criminal penalty.

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 13.13, Code of Criminal Procedure, to authorize that a criminal conspiracy, if the object of the conspiracy is an offense classified as a felony under the Tax Code, regardless of whether the offense was committed, be prosecuted in any county in which venue is proper under the Tax Code for the offense.

SECTION 2. Amends Article 13.21, Code of Criminal Procedure, to authorize that the offense of engaging in organized criminal activity be prosecuted in any county in which any act is committed to effect an objective of the combination, or, if the prosecution is based on a criminal offense classified as a felony under the Tax Code, in any county in which venue is proper under the Tax Code for the offense.

SECTION 3. Amends Chapter 13, Code of Criminal Procedure, by adding Article 13.35, as follows:

Art. 13.35. MONEY LAUNDERING. Authorizes that money laundering be prosecuted in the county in which the offense was committed as provided by Article 13.18 (Other Offenses) or, if the prosecution is based on a criminal offense classified as a felony under the Tax Code, in any county in which venue is proper under the Tax Code for the offense.

SECTION 4. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0182, as follows:

Art. 42.0182. FINDINGS REGARDING TAX FRAUD. (a) Authorizes the state, in the trial of an offense under the Tax Code or an offense under the Penal Code related to the administration of taxes, to file a written request with the court in which the indictment or information is pending for the court to make affirmative findings regarding the

commission of tax fraud as described by Subsection (b). Requires the state to provide a copy of the written request to the defendant before the date the trial begins.

(b) Requires the court, if the state requests affirmative findings in the manner required by Subsection (a), to make the requested affirmative findings and enter the findings in the papers in the case if the court finds by clear and convincing evidence that:

(1) the defendant's failure to pay a tax or file a report when due, as required by Title 2 (State Taxation) or 3 (Local Taxation), Tax Code, was a result of fraud or an intent to evade the tax;

(2) the defendant altered, destroyed, or concealed any record, document, or thing, or presented to the comptroller any altered or fraudulent record, document, or thing, or otherwise engaged in fraudulent conduct for the apparent purpose of affecting the course or outcome of an audit, investigation, redetermination, or other proceeding before the comptroller; or

(3) the defendant's failure to file a report under Chapter 162 (Motor Fuel Taxes), Tax Code, or to pay a tax under that chapter when the tax became due is attributable to fraud or an intent to evade the application of Chapter 162, Tax Code, or a rule adopted under Chapter 111 (Collection Procedures) or 162, Tax Code.

SECTION 5. Amends Section 403.012, Government Code, as follows:

Sec. 403.012. New heading: ACCEPTANCE OF FEDERAL MONEY OR PROPERTY.

(a) Creates this subsection from existing text. Makes no further changes.

(b) Authorizes the comptroller of public accounts (comptroller) to accept money or property under a federal equitable sharing program. Requires the comptroller, in accepting the money or property, to comply with federal program requirements, including those governing accounting and the permissible use of an award.

SECTION 6. Amends Section 411.109(a), Government Code, to entitle the comptroller to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that the comptroller believes is necessary for the enforcement or administration of Chapter 151 (Limited Sales, Excise, and Use Tax), 152 (Taxes on Sale, Rental, and Use of Motor Vehicles), 154 (Cigarette Tax), 155 (Cigars and Tobacco Products Tax), or 162, Tax Code, rather than Chapter 151, 152, 153, 154, or 155, Tax Code, including criminal history record information that relates to a person who meets one of certain criteria.

SECTION 7. Amends Section 34.01(4), Penal Code, to redefine "proceeds."

SECTION 8. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it to provide that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of certain activities, including any offense classified as a felony under the Tax Code. Makes nonsubstantive changes.

SECTION 9. Amends Chapter 101, Tax Code, by adding Section 101.0021, as follows:

Sec. 101.0021. APPLICABILITY OF PENAL CODE. Provides that, in addition to Section 1.03 (Effect of Code), Penal Code, Sections 15.02 (Criminal Conspiracy) and 15.04 (Renunciation Defense), Penal Code, and Title 11 (Organized Crime), Penal Code, apply to offenses prescribed by this code.

SECTION 10. Amends Subchapter A, Chapter 111, Tax Code, by adding Section 111.00452, as follows:

Sec. 111.00452. EMPLOYMENT OF INVESTIGATORS. (a) Authorizes an investigator employed under Section 111.0045 (Use of Outside Personnel; Delegation of Powers), in addition to the authority granted by that section, to investigate:

(1) any criminal offense under this code; or

(2) any criminal offense under any other law if the offense relates directly or indirectly to a tax, fee, penalty, or charge administered, collected, or enforced by the comptroller.

(b) Provides that an investigator commissioned by the comptroller as a peace officer has the powers of a peace officer coextensive with the boundaries of this state.

SECTION 11. Amends Section 111.006(c), Tax Code, as follows:

(c) Authorizes the comptroller or the attorney general to:

(1) use information or records made confidential by this title to enforce this title or the criminal laws of this state or the United States; or

(2) authorize the use of information or records made confidential by this title in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party.

Makes nonsubstantive changes.

SECTION 12. Amends Section 111.061, Tax Code, by adding Subsection (c), as follows:

(c) Provides that the penalties provided by Subsection (b) (relating to imposing an additional penalty of 50 percent of the tax due) are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud, including expenses incurred in conducting an investigation.

SECTION 13. Amends Sections 111.207(a) and (b), Tax Code, as follows:

(a) Provides that, in determining the expiration date for a period when a tax imposed by this title may be assessed, collected, or refunded, the following periods are not considered:

(1) the period following the date of a tax payment made under protest, but only if a lawsuit is timely filed in accordance with Chapter 112 (Taxpayers' Suits);

(2) the period during which a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of the tax due;

(3) the period during which an administrative redetermination or refund hearing is pending before the comptroller; and

(4) the period during which an indictment or information is pending for a felony offense related to the administration of the Tax Code against any taxpayer or any person personally liable or potentially personally liable for the payment of the tax under Section 111.0611 (Personal Liability for Fraudulent Tax Evasion).

(b) Provides that the suspension of a period of limitation under Subsection (a)(1), (2), or (3), rather than under Subsection (a), is limited to the issues that were contested under those subdivisions. Makes a conforming change.

SECTION 14. Amends Section 151.025(a), Tax Code, as follows:

(a) Requires all sellers and all other persons storing, using, or consuming in this state a taxable item purchased from a retailer to keep certain records in the form the comptroller requires, including records of all gross receipts, including documentation in the form of receipts, shipping manifests, invoices, and other pertinent papers, from each sale, rental, lease, taxable service, and taxable labor transaction occurring during each reporting period, and records in the form of sales receipts, invoices, and other pertinent papers showing all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction during each reporting period. Makes nonsubstantive changes.

SECTION 15. Amends the heading to Section 151.7032, Tax Code, to read as follows:

Sec. 151.7032. FAILURE TO PAY TAXES COLLECTED; CRIMINAL PENALTY AND AGGREGATION OF AMOUNTS INVOLVED.

SECTION 16. Amends Section 151.7032, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that an offense under this section is:

(1) a Class C misdemeanor if the amount of the tax collected and not paid is less than \$50, rather than less than \$10,000;

(2) a Class B misdemeanor if the amount of the tax collected and not paid is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the amount of the tax collected and not paid is \$500 or more but less than \$1,500;

(4) a state jail felony if the amount of the tax collected and not paid is \$1,500 or more, rather than \$10,000 or more, but less than \$20,000;

(5) a felony of the third degree if the amount of the tax collected and not paid is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the amount of the tax collected and not paid is \$100,000 or more but less than \$200,000; and

(7) a felony of the first degree if the amount of the tax collected and not paid is \$200,000 or more.

Makes nonsubstantive changes.

(c) Provides that conduct, when tax is collected and not paid in violation of Subsection (a) (relating to an offense of failing to pay collected tax to the comptroller) pursuant to one scheme or continuous course of conduct, may be considered as one offense and the amounts aggregated in determining the grade of the offense.

SECTION 17. Amends Section 151.707(b), Tax Code, to provide that an offense under Subsection (a) (relating to the conditions for committing an offense), rather than under Subsection (a)(1) or (a)(2) of this section, is a certain grade of offense.

SECTION 18. Amends Subchapter L, Chapter 151, Tax Code, by adding Section 151.7075, as follows:

Sec. 151.7075. FAILURE TO PRODUCE CERTAIN RECORDS AFTER USING RESALE CERTIFICATE; CRIMINAL PENALTY. (a) Provides that a person commits

an offense if the person knowingly fails to produce to the comptroller records that document a taxpayer's taxable sale of items that the taxpayer obtained using a resale certificate.

(b) Provides that the records to which Subsection (a) applies are records:

(1) required to be kept under Section 151.025 (Records Required to be Kept); and

(2) requested by the comptroller under Section 151.023 (Investigations and Audits) that are not produced in the period required by that section.

(c) Provides that the items to which Subsection (a) applies are items the sales of which are required to be reported to the comptroller under Section 151.433 (Reports by Wholesalers and Distributors of Beer, Wine, and Malt Liquor), 154.212 (Reports by Wholesalers and Distributors of Cigarettes), or 155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products).

(d) Provides that an offense under this section is:

(1) a Class C misdemeanor if the tax avoided by the use of the resale certificate is less than \$20;

(2) a Class B misdemeanor if the tax avoided by the use of the resale certificate is \$20 or more but less than \$200;

(3) a Class A misdemeanor if the tax avoided by the use of the resale certificate is \$200 or more but less than \$750;

(4) a felony of the third degree if the tax avoided by the use of the resale certificate is \$750 or more but less than \$20,000; or

(5) a felony of the second degree if the tax avoided by the use of the resale certificate is \$20,000 or more.

(e) Provides that it is an affirmative defense to prosecution under this section that the items listed for purchase on the resale certificate had not been resold at the time of the comptroller's request for records under Section 151.023.

(f) Provides that conduct, if conduct described by Subsection (a) is related to one scheme or continuous course of conduct, may be considered as one offense and authorizes that the amounts of tax avoided be aggregated in determining the grade of the offense.

SECTION 19. Amends Section 154.405, Tax Code, by adding Subsection (e) to provide that a forfeiture proceeding under this section is an in rem proceeding.

SECTION 20. Amends Section 154.406, Tax Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Authorizes the comptroller to sell property forfeited to the state at public or private sale in any commercially reasonable manner or retain the property for official use by the comptroller's criminal investigation division. Authorizes property retained for use under this subsection to later be sold by the comptroller under this section.

(d) Provides that the comptroller is considered the owner under Subtitle A (Certificates of Title and Registration of Vehicles), Title 7 (Vehicles and Traffic), Transportation Code, if an automobile or other vehicle seized under Section 154.403 (Seizure) is forfeited and retained by the comptroller under Subsection (a). Requires the Texas Department of Motor Vehicles (TxDMV) to issue a certificate of title for the vehicle to the comptroller.

Authorizes the comptroller to maintain, repair, use, and operate the vehicle with money appropriated for current operations.

SECTION 21. Amends Subchapter H, Chapter 154, Tax Code, by adding Section 154.407, as follows:

Sec. 154.407. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING SEIZED CIGARETTES. (a) Authorizes the comptroller to photograph cigarettes seized under Section 154.403 before their sale under this subchapter.

(b) Provides that, in a proceeding arising out of this chapter, including a criminal proceeding, the state is not required to produce the actual cigarettes.

(c) Provides that the photographs are admissible in evidence under rules of law governing the admissibility of photographs. Provides that the photographs are as admissible in evidence as are the cigarettes themselves.

(d) Provides that a person's rights of discovery and inspection of tangible physical evidence are satisfied if the photographs taken under this section are made available to the person by the state on order of any court or other entity having jurisdiction over the proceeding.

SECTION 22. Amends Section 155.145, Tax Code, by adding Subsection (e) to provide that a forfeiture proceeding under this section is an in rem proceeding.

SECTION 23. Amends Section 155.1451, Tax Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Authorizes the comptroller to sell property forfeited to the state at public or private sale in any commercially reasonable manner or retain the property for official use by the comptroller's criminal investigation division. Authorizes property retained for use under this subsection to later be sold by the comptroller under this section.

(d) Provides that the comptroller is considered the owner under Subtitle A, Title 7, Transportation Code, if an automobile or other vehicle seized under Section 155.143 is forfeited and retained by the comptroller under Subsection (a). Requires TxDMV to issue a certificate of title for the vehicle to the comptroller. Authorizes the comptroller to maintain, repair, use, and operate the vehicle with money appropriated for current operations.

SECTION 24. Amends Subchapter E, Chapter 155, Tax Code, by adding Section 155.146, as follows:

Sec. 155.146. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING SEIZED TOBACCO PRODUCTS. (a) Authorizes the comptroller to photograph tobacco products seized under Section 155.143 (Seizure) before their sale under this subchapter.

(b) Provides that, in a proceeding arising out of this chapter, including a criminal proceeding, the state is not required to produce the actual tobacco products.

(c) Provides that the photographs are admissible in evidence under rules of law governing the admissibility of photographs. Provides that the photographs are as admissible in evidence as are the tobacco products themselves.

(d) Provides that a person's rights of discovery and inspection of tangible physical evidence are satisfied if the photographs taken under this section are made available to the person by the state on order of any court or other entity having jurisdiction over the proceeding.

SECTION 25. Amends Section 162.401, Tax Code, by adding Subsection (c) to provide that the penalties provided by this section are intended to be remedial in nature and are provided for the protection of state revenue and to reimburse the state for expenses incurred as a result of fraud, including expenses incurred in conducting an investigation.

SECTION 26. Makes application of this Act, except as provided by Section 27 of this Act, prospective. Provides that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 27. Makes application of Article 13.13, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 28. Provides that this Act applies only to a seizure of property that occurs on or after the effective date of this Act. Provides that a seizure of property that occurs before the effective date of this Act is covered by the law in effect as it existed on the date the seizure occurred, and the former law is continued in effect for that purpose.

SECTION 29. Effective date: September 1, 2011.