

BILL ANALYSIS

Senate Research Center
86R19193 SRA-F

H.B. 3475
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Multiple sections of Chapter 155 (Cigars and Tobacco Products Tax), Tax Code, have not been updated for over 20 years. Certain provisions in this chapter are unclear and increase the difficulty of the comptroller of public accounts of the State of Texas in interpreting taxability, enforcing violations, and resolving issues arising from litigation or general inquiries.

H.B. 3475 amends current law to define potentially unclear terms, clarify existing definitions and requirements, and provide conforming cleanup throughout Chapter 155.

H.B. 3475 amends current law relating to the administration, collection, and remittance of the cigars and tobacco products tax, and requires a permit.

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 155.001, Tax Code, is amended by amending Subdivisions (1), (6), (7), (8), (9), (10), (11), (12), (13), (14), and (15) and adding Subdivisions (6-a) and (13-a), as follows:

(1) Redefines "bonded agent" to mean a person in this state who is a third-party agent of a manufacturer outside this state and who receives tobacco products in interstate commerce and stores the tobacco products for distribution or delivery to distributors under orders from the manufacturer, rather than to mean a person in this state who is an agent of a person outside this state and receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the person outside this state.

(6) Redefines "distributor" to mean a person who:

(A) receives untaxed tobacco products, rather than tobacco products, for the purpose of making a first sale in this state from a manufacturer outside the state or within the state or otherwise brings or causes to be brought into this state untaxed tobacco products, rather than tobacco products, for sale, use, or consumption;

(B) makes no changes to this paragraph; or

(C) is an importer, rather than an importer or import broker.

(6-a) Defines "engage in business" for purposes of this chapter.

(7) Redefines "export warehouse" to mean a person in this state who receives untaxed tobacco products, rather than tobacco products, from manufacturers and

stores the tobacco products for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(8) Redefines "first sale" to mean, except as otherwise provided by this chapter (Cigars and Tobacco Products Tax):

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of tobacco products in or into this state, rather than in intrastate commerce, which:

(i) includes the sale of tobacco products by:

(a) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(b) a manufacturer in this state who transfers the tobacco products in this state; and

(ii) does not include:

(a) the sale of tobacco products by a manufacturer outside this state to a distributor in this state; or

(b) the transfer of tobacco products from a manufacturer outside this state to a bonded agent in this state; or

(B)-(C) makes no changes to these paragraphs.

(9) Defines "importer," rather than defining "importer" or "import broker," for purposes of this chapter.

(10) Redefines "manufacturer" to mean a person who manufactures, fabricates, or assembles tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of tobacco products, for sale or distribution, rather than to mean a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

(11) Redefines "manufacturer's representative" to mean a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products for which the tax imposed under this chapter has been paid.

(12) Redefines "permit holder" to mean a bonded agent, distributor, wholesaler, manufacturer, importer, export warehouse, or retailer who obtains, rather than is required to obtain, a permit under Section 155.041 (Permits).

(13) Redefines "place of business" to include a vending machine from which tobacco products are sold.

(13-a) Defines "raw tobacco" for purposes of this chapter.

(14) Redefines "retailer" to mean a person who engages in the business of selling tobacco products to consumers and includes the owner of a vending machine, rather than to mean a person who engages in the practice of selling tobacco products to consumers and includes the owner of a coin-operated vending machine.

(15) Redefines "tobacco product" to include an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette or an e-cigarette as defined by Section 161.081 (Definitions), Health and Safety Code.

SECTION 2. Amends Subchapter B, Chapter 155, Tax Code, by adding Sections 155.0212, 155.025, and 155.028, as follows:

Sec. 155.0212. **LIABILITY OF PERMITTED DISTRIBUTOR.** Provides that a permitted distributor who makes a first sale to a permitted distributor in this state is liable for and is required to pay the tax imposed by this chapter.

Sec. 155.025. **MANUFACTURING EXEMPTION.** Provides that raw tobacco sold to a permitted manufacturer in this state for the purpose of using the tobacco in manufacturing is not subject to the taxes imposed by this chapter.

Sec. 155.028. **IMPACT OF TAX.** Provides that the ultimate consumer or user in this state bears the impact of the tax imposed by this chapter. Provides that, if another person pays the tax, the amount of the tax is added to the price charged to the ultimate consumer or user.

SECTION 3. Amends Sections 155.041(a), (b), and (h), Tax Code, as follows:

(a) Prohibits a person from engaging in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer, rather than as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer, unless the person has applied for and received the applicable permit from the comptroller of public accounts of the State of Texas (comptroller).

(b) Requires each distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer to obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer. Makes conforming changes.

(h) Requires permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, export warehouse, importer, or retailer to be governed exclusively by the provisions of this code. Makes conforming changes.

SECTION 4. Amends Section 155.0415, Tax Code, by amending Subsection (a) and adding Subsections (c), (d), (e), (f), (g), (h), and (i), as follows:

(a) Authorizes tobacco products, except for retail sales to consumers, to only be sold or distributed by and between permit holders as provided by this section, rather than by and between permit holders.

(c) Authorizes a manufacturer outside this state who is not a permitted distributor to sell tobacco products only to a permitted distributor.

(d) Authorizes a permitted distributor to sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(e) Authorizes a permitted importer to sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(f) Authorizes a permitted wholesaler to sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(g) Authorizes a permitted retailer to sell tobacco products only to the consumer and to purchase tobacco products only from a permitted distributor or wholesaler in this state.

(h) Authorizes a permitted export warehouse to sell tobacco products only to persons authorized to sell or consume untaxed tobacco products outside the United States.

(i) Authorizes a manufacturer's representative to sell tobacco products only to a permitted distributor, wholesaler, or retailer.

SECTION 5. Amends the heading to Section 155.049, Tax Code, to read as follows:

Sec. 155.049. PERMIT YEAR; FEES.

SECTION 6. Amends Section 155.049, Tax Code, by adding Subsections (c) and (g), as follows:

(c) Provides that a fee is not required for an export warehouse permit.

(g) Provides that a person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

SECTION 7. Amends Section 155.101, Tax Code, as follows:

Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Requires each retailer to keep records at a single commercial business location, rather than a single location, which the retailer is required to designate as its principal place of business in the state, of all tobacco products purchased and received.

SECTION 8. Amends Subchapter D, Chapter 155, Tax Code, by adding Section 155.109, as follows:

Sec. 155.109. EXPORT WAREHOUSE'S RECORDS. (a) Requires each export warehouse to keep, at each of the warehouse's places of business in this state, records of all tobacco products received, distributed, and delivered.

(b) Requires the records to include:

- (1) invoices for receipts and deliveries;
- (2) orders for receipts and deliveries;
- (3) shipping records for receipts and deliveries; and
- (4) shipping records for distribution and delivery.

SECTION 9. Amends Sections 155.201(a) and (b), Tax Code, as follows:

(a) Makes conforming changes. Provides that a person violates this chapter if the person:

- (1) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, manufacturer's representative, or retailer and fails to keep records required by this chapter;
- (2) engages in the business of a bonded agent, distributor, wholesaler, manufacturer, export warehouse, importer, or retailer without a valid permit;
- (3) is a distributor, wholesaler, manufacturer, export warehouse, importer, bonded agent, or retailer and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report or application required by this chapter to the comptroller; or
- (4) makes no changes to this subdivision.

(b) Requires a person who violates this chapter to pay to the state a penalty of not more than \$2,000 for each violation, rather than providing that a person who violates this chapter forfeits and is required to pay to the state a penalty of not more than \$2,000 for each violation.

SECTION 10. Amends Section 155.202, Tax Code, as follows:

Sec. 155.202. NONPAYMENT OF TAX. Provides that a person commits an offense if the person, without the tax being paid:

(1)–(2) makes no changes to these subdivisions; or

(3) knowingly consumes, uses, or smokes tobacco products subject to the tax imposed by this chapter, rather than knowingly consumes, uses, or smokes tobacco products in an amount on which a tax of more than \$50 is due.

SECTION 11. Amends Section 155.207, Tax Code, as follows:

Sec. 155.207. PERMITS. Provides that a person commits an offense if the person acting:

(1)–(4) makes no changes to these subdivisions; or

(5) as a bonded agent or export warehouse, rather than as a bonded agent, stores, distributes, or delivers tobacco products on which the tax has not been paid without having a valid permit.

SECTION 12. Amends Section 155.209, Tax Code, as follows:

Sec. 155.209. TRANSPORTATION OF TOBACCO PRODUCTS. Makes a nonsubstantive change to this section.

SECTION 13. Amends the heading to Section 155.211, Tax Code, to read as follows:

Sec. 155.211. POSSESSION: TAX DUE.

SECTION 14. Amends Section 155.211(a), Tax Code, as follows:

(a) Provides that a person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax is required to be paid that has not been paid, rather than providing that a person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax of more than \$50 is required to be paid. Provides that the absence of evidence of a tax payment is prima facie evidence of nonpayment.

SECTION 15. Repealer: Section 155.022 (First Sale of Tobacco Products), Tax Code.

Repealer: Section 155.112(b) (relating to certain records requirements not being applicable to a person who possesses tobacco products on which a tax of less than \$50 is due), Tax Code.

Repealer: Section 155.203 (Possession: Tax Due \$50 or Less), Tax Code.

SECTION 16. Makes application of Sections 155.202, 155.207, 155.209, and 155.211, Tax Code, as amended by this Act, and the repeal by this Act of Section 155.203, Tax Code, prospective. Provides that for purposes of this section, an offense was committed before the effective date if any element of the offense occurred before that date.

SECTION 17. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides that liability continues in effect as if this Act had not been enacted, and that 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 18. Effective date: September 1, 2019.