

# Texas Historical Statutes Project

TEXAS TAX CODE 1984



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# Texas Tax Code

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WITH TABLES  
AND INDEX

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OCT 4 1984

*As Amended through the  
1983 Regular and First  
Called Sessions of the  
68th Legislature*

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WTSC Tax

## PREFACE

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This Pamphlet contains the text of the Tax Code as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Tax Code constitutes a unit of the Texas Legislative Council's statutory revision program. Title 1 of the Code was originally enacted by Acts 1979, 66th Leg., ch. 841. Title 2 of the Code was originally enacted by Acts 1981, 67th Leg., ch. 389.

Disposition and Derivation Tables are included preceding the Code, thus providing a means of tracing repealed subject matter into the Code and, on the other hand, of searching out the source of Code sections.

The Table entries covering Title 1, the Property Tax Code, were supplied by C. Richard Fine. From July, 1978 to June, 1979, Mr. Fine served as legislative assistant to State Representative Wayne Peveto, House sponsor of the legislation enacting the Property Tax Code. He served as legal counselor to the State Property Tax Board from June, 1979 to November, 1981. Mr. Fine is a graduate of the University of Texas School of Law.

The Table entries covering Title 2, State Taxation, were provided through the courtesy of the Texas Legislative Council.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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## EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

\* No legislation for which the ninety day effective date is applicable.



## DISPOSITION TABLE

Showing where provisions of the Civil Statutes, the Education and Water Codes, and Title 122, Taxation—General, are covered in the Tax Code.

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964 .....	11.17	1528c, § 29 (part) .....	171.080
1036 .....	1.04(2), (3)	2461—2.10 (part) .....	171.077
1037 .....	1.04(4)	2512 (part) .....	171.076
1042b .....	6.22(c)	2518 (part) .....	171.071
	6.23(a)	4437f—1, § 6 (part) .....	171.073
1043 .....	22.01	4447r, § 6 (part) .....	171.075
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1053 .....	41.11	§§ 2, 3 .....	111.002
	41.46	§ 4 .....	111.013
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1055 .....	41.12	§ 6 .....	111.002
1056 .....	6.42(c)	§§ 7, 8 .....	—
1057 .....	31.01	7047c—3 .....	—
1058 .....	34.01	7048 .....	192.009
1059 .....	34.01(d)		192.010
1060 .....	33.21	7048a .....	Civ.
1062 .....	34.01(c)	7049 .....	31.06(a)
1065 .....	34.21(a)		192.004
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7246	6.21(a)	§ 5	33.50
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7253	31.01		34.04
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7267	33.21(b)	7345b-3	33.54
7268	33.21(b)	7345c	33.02
	33.24	7345f, § 1	42.01
7269	32.05(b), (c)		42.21
7272	31.07	§ 2	42.22
7284	34.21(b)	§ 3	42.23(c)
7285	34.21(b)	§ 4	42.27
7298	33.05(a)	7346	41.01(4)
7321	33.03	7347	41.01(4)
	33.47	7359	6.22(c)
7324	33.04		6.23(a)
7326	33.41	7359a, § 1	141.001
	33.42	§ 2	141.002
	33.47	§ 3	141.003
7326a	33.52	§ 4	141.004
7328	33.53	§ 5	141.005
	34.01		
7328.1	33.43	<b>Education Code</b>	<b>Tax Code</b>
7329a	33.06	<b>Section</b>	<b>Section</b>
7330	34.01	11.72 (part)	5.01
7332	6.30(a)	11.73	5.02
	33.42	11.74	5.03
7333	6.30(a)	11.75	5.04
	33.48	11.77	5.05
	33.49(a)	11.83	5.06
7335	6.30(c)	11.84	5.07
7335a	6.30(c) to (e)	11.85	5.08
7335b	6.30(b)	17.84	11.11(c)
7336	31.02	18.13(d)	6.29(b)
	31.03(a)	18.27	32.01
	33.01	20.03(a)	26.01
	33.03		26.05

## DISPOSITION TABLE

Education Code Section	Tax Code Section	Water Code Section	Tax Code Section
20.03(c) -----	26.04	51.594 -----	34.21
(d) -----	26.05	51.595 -----	6.22
	26.06		to
(e) -----	25.19		6.24
(f) -----	31.01(a)	51.596 -----	6.27
(g) -----	31.01(c)	53.074 -----	6.29(a)
22.11(b) -----	23.01	53.078 -----	6.41
(f) -----	32.01	53.079 -----	6.41
23.91 -----	1.04(14), (15)	53.082 -----	6.42(b)
23.93(b) -----	6.29(a)		41.68
23.94 -----	6.22(c)	53.083 -----	6.42(c)
	6.23(a)	53.191 -----	1.04(14), (15)
23.95(e) -----	6.23(b)	53.192 -----	31.10
	6.24	53.193 -----	22.01
23.97(c) -----	6.29(b)		22.23
23.98 -----	6.30(b), (c)	53.195 -----	23.01(a)
			25.22
		53.196 -----	41.12
<b>Water Code</b>	<b>Tax Code</b>	53.199 -----	31.01(a)
<b>Section</b>	<b>Section</b>		31.02
51.086 -----	6.29(a)	54.602 -----	26.05(a)
51.563 -----	22.01	54.606 -----	22.01
	22.21		22.21
	to		to
	22.26		22.26
51.565 -----	22.26(a)		22.26
51.566 -----	22.26(b)	54.608 -----	22.26(a)
51.567(c), (d) -----	25.02(a)(1)	54.609 -----	22.26(b)
51.571 -----	6.41	54.610(c), (d) -----	25.02(a)(1)
51.572 -----	6.42(b)	54.614 -----	6.41
51.574 -----	6.42(c)	54.615 -----	6.42(b)
51.575 -----	6.42(a)	54.617 -----	6.42(c)
	41.68	54.618 -----	6.42(a)
51.576 -----	6.42(b)		41.68
51.577(a), (c), (d) -----	41.01(1)	54.619 -----	6.42(b)
	41.08	54.620(a), (c), (d) -----	41.01(1)
	to		41.08
	41.10		to
(b) -----	41.61		41.10
51.578 -----	41.41	(b) -----	41.61
	41.44	54.621 -----	41.41
51.580 -----	41.45		41.44
51.581 -----	41.11	54.623 -----	41.45
	41.46	54.624 -----	41.11
51.582 -----	41.45		41.46
51.583 -----	41.12	54.625 -----	41.45
51.586 -----	31.01(a)	54.626 -----	41.12
	31.02	54.628 -----	31.01(a)
51.587(a) -----	31.02		31.02
	32.01	54.629(a) -----	31.02
(b) -----	33.53		32.01
(c) -----	33.41	(b) -----	33.53
51.588 -----	33.01	(c) -----	33.41
51.589 -----	33.03	54.630 -----	33.01
51.592 -----	33.41	54.631 -----	33.03
	33.42	54.634 -----	33.41
51.593 -----	34.01		33.42

## DISPOSITION TABLE

Water Code Section	Tax Code Section	Water Code Section	Tax Code Section
54.635	34.01	57.281	6.30
54.636	34.21	57.283(a)	33.41
54.637	6.22	(b)	33.43
	to	(e)	33.41
	6.24	57.284	33.52
55.117	6.29(a)		33.53
55.582	23.01(a)		34.01(d)
	25.22	57.345	6.27(b)
55.584	22.01	58.563	22.01
	22.23		22.21
55.585(a)	6.41		to
(b)	6.42(b)		22.26
(c)	6.42(a)	58.565	22.26(a)
55.587	6.42(c)	58.566	22.26(b)
55.588(a), (c), (d)	41.01(1)	58.567(c), (d)	25.02(a)(1)
	41.08	58.572	6.42(b)
	to	58.574	6.42(c)
	41.10	58.575	6.42(a)
(b)	41.61		41.68
55.589(a)	41.01(1)	58.576	6.42(b)
	41.08	58.577(a), (c), (d)	41.01(1)
	to		41.08
	41.10		to
(b)	41.41		41.10
	41.44	(b)	41.61
	41.45	58.578	41.41
55.591	41.11		41.44
	41.46	58.580	41.45
55.592	41.45	58.581	41.11
	41.47		41.46
55.593	41.12	58.582	41.45
55.594	41.12	58.583	41.12
55.598	31.10	58.586	31.01(a)
55.599	31.01(a)		31.02
	31.02	58.587(a)	31.02
55.603(a)	32.01		32.01
(b)	33.53	(b)	33.53
55.605	33.01	(c)	33.41
55.606	33.21	58.588	33.01
55.607	33.03	58.589	33.03
55.610(a)	6.30	58.591	6.30
	33.41	58.592	33.41
(b)	33.43		33.42
(c)	33.41	58.593	34.01
55.613	34.21	58.594	34.21
55.614	34.01(b)	58.595	6.22
55.615	34.03		to
55.616	34.01(d)		6.24
55.617	6.30(c)	58.596	6.27
55.618	33.48	62.253	6.29(b)
56.074	6.29(b)	63.102	6.29(a)
56.075	6.27(b)	63.286	22.01
56.298	6.27(b)		22.21
57.175	6.29(b)		to
57.255(a)	6.27(b)		22.26
57.280	33.41		

## DISPOSITION TABLE

Water Code Section	Tax Code Section	Tax.-Gen. Article	Tax Code Section
63.288(a) -----	6.41	1.06, § (1) -----	112.101
(b) -----	6.42(b)	§ (2) -----	112.101
(c) -----	6.42(a)	-----	112.104
	41.68	§ (3) -----	112.102
63.290 -----	6.42(b)	§ (4) -----	112.103
63.291 -----	32.01	§ (5) -----	112.104
63.292 -----	1.04(14), (15)	-----	112.105
63.293 -----	33.03	§ (6) -----	112.001
63.294 -----	6.30	§ (7) -----	112.105
63.295 -----	33.41	§ (8) -----	112.106
63.296 -----	34.01(c)	§ (9) -----	112.106
		§ (10) -----	112.107
<b>Tax.-Gen.</b>	<b>Tax Code</b>	1.07, § (1)(a) -----	-----
<b>Article</b>	<b>Section</b>	§ (1)(b) -----	113.001
1.01 -----	101.003	§ (1)(c) -----	113.101
	to	§ (1)(d) -----	111.015
	101.006	§ (1)(e)(i) -----	113.002
1.02 -----	-----	-----	113.006
1.03 -----	111.003	§ (1)(e)(ii) -----	113.003
1.031, § (1) -----	111.004	§ (1)(f)(i) -----	113.102
	111.005	§ (1)(f)(ii) -----	113.103
§ (2) -----	111.004	§ (1)(g) -----	113.104
§§ (3), (4) -----	111.006	§ (1)(h)(i) -----	111.251
1.031A -----	111.0041	-----	111.252
1.032, §§ (A), (B) -----	111.008	§ (1)(h)(ii) -----	111.253
§§ (C), (D) -----	111.009	§ (1)(h)(iii) -----	111.254
§ (E) -----	-----	§ (1)(h)(iv) -----	-----
1.032A, § (a) -----	111.102	§ (1)(h)(v) -----	111.255
§ (b) -----	111.101	§ (2) -----	111.016
§ (c) -----	111.103	§ (3) -----	111.015
1.033 -----	111.052	1.07A, § (1)(a) -----	113.004
1.034 -----	111.051	§ (1)(b), (c) -----	113.005
1.035, § (1) -----	111.006	§ (1)(d) -----	113.005
§ (2) -----	111.007	-----	113.006
1.036 -----	111.0042	§ (1)(e) -----	113.005
1.037 -----	111.0043	§ (2)(a)(i) -----	113.007
1.038 -----	111.0044	§ (2)(a)(ii), (iii) -----	113.009
1.04 -----	111.010	§ (2)(a)(iv) -----	113.011
1.045, § (A) -----	111.201	§ (3) -----	113.010
	111.205	§ (4) -----	113.008
§ (B) -----	111.202	1.07A-1 -----	113.005
§ (C) -----	111.203	1.07B, § (1) -----	113.105
§ (D) -----	111.204	§§ (2), (3) -----	113.106
§ (E) -----	111.207	§ (4) -----	113.107
§ (F) -----	111.206	1.07C, § 1 -----	113.201
§ (G) -----	111.107	§ 2 -----	113.202
1.05, § (1) -----	112.051	§ 3 -----	113.203
§ (2) -----	112.001	§ 4 -----	113.204
	112.052	§ 5 -----	113.205
	to	§ 6 -----	113.206
	112.055	1.08 -----	111.013
	112.057	1.09 -----	101.008
§ (3) -----	112.056	1.10 -----	111.002
	112.057	1.11A, §§ (1) to (3) -----	111.104
§ (4) -----	112.058	§ (4) -----	111.104
§ (5) -----	112.059	-----	111.105
	112.060		

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section		Tax.-Gen. Article	Tax Code Section
1.11A, § (5) -----	111.105		3.04, §§ (1) to (11) -----	201.001
§ (6) -----	111.105		§ (12) -----	201.002
	112.151		§ (13) -----	201.001
	to		3.05, § (1) -----	201.204
	112.153			201.251
§ (7) -----	112.151		§ (2) -----	-----
§ (8) -----	112.152		§ (3) -----	201.251
	112.154		§ (4) -----	201.204
§§ (9), (10) -----	112.155			201.251
§ (11) -----	111.106		3.06 -----	201.301
§ (12) -----	111.104			201.302
§ (13) -----	111.015			201.403
§ (14) -----	112.156		3.07 -----	-----
§ (15) -----	111.108		3.08 -----	201.302
1.12 -----	111.059			201.303
1.13, §§ (a), (b) -----	111.054			201.353
§ (c) -----	111.055			201.355
§ (d) -----	111.056			201.402
§ (e) -----	111.053		3.09, § (1) -----	-----
§ (f) -----	101.003		§ (2) -----	201.304
§ (g) -----	111.054		3.10, § (1) -----	201.352
§ (h) -----	111.057		§ (2) -----	201.206
§ (i) -----	111.058		3.11 -----	-----
1.14, §§ (a), (b) -----	111.011		3.12 -----	201.353
§ (c) -----	111.012			201.354
1.15 -----	111.014		4.01, §§ (1) to (7) -----	202.001
2.01 -----	251.001		§ (8) -----	202.002
	to		§§ (9) to (11) -----	202.001
	251.012 Rep.		4.02 -----	202.002
3.01, § (1) -----	201.051			202.051
	201.052			to
	201.401			202.053
§ (2) -----	201.053			202.351
3.01 note -----	-----		4.02 note -----	202.002
3.02, § (1) -----	201.101		4.03, § (1) -----	202.153
	to			202.251
	201.104		§ (2) -----	-----
§ (2) -----	201.001		§ (3) -----	202.251
	201.054		§ (4) -----	202.153
	201.055			202.251
	201.105			202.302
	201.106		§ (5) -----	202.154
3.03, § (1) -----	201.151		§ (6) -----	202.156
	201.203		§ (7) -----	202.101
	201.251			202.201
§ (2) -----	201.152			202.251
	201.201		§ (8) -----	202.151
	201.202			to
	201.204			202.154
§ (3) -----	201.201		§ (9) -----	202.151
	to			202.251
	201.203			202.252
	201.251		§ (10) -----	111.060
	201.252		4.04, § (1) -----	202.301
§ (4) -----	111.060		§ (2) -----	202.101
	201.351			202.004
§ (5) -----	201.205			202.201

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
4.04, § (3)	202.004	6.04, § (3)	152.045
	202.102		152.065
	202.202	§ (4)	152.045
§ (4)	202.103	§§ (5) to (7)	152.046
§ (5)	202.004	6.041	152.061
	202.203	6.042	152.068
§ (6)	202.004	6.05, § (1)	152.024
	202.104		152.062
§ (7)	202.003		152.101
	202.004	§§ (2), (3)	152.063
	202.105	6.06, § (1)	111.060
	202.156		152.044
	202.204		152.067
4.05	202.155	§ (2)	152.103
4.06	111.060	6.07	152.064
	202.152		152.121
	202.202	6.08	152.102
	202.301	6.09, § (1)	152.081
4.07, § (1)	202.302	§ (2)	152.001
§ (2)	202.303		152.087
§ (3)	202.304	§ (3)	152.001
4.08	—		152.082
4.09	202.305		152.088
4.10	202.205	§ (3)(a), (b)	152.086
4.11	202.005	§ (3)(c)	152.001
	202.352	§ (4)	152.084
4.12	202.307	§ (5)	152.085
4.13	202.306	§ (6)	152.089
4.14	—	7.01, §§ (1), (2)	154.001
5.01	203.001	§ (3)	—
	to	§§ (4) to (9)	154.001
	203.003	§§ (10) to (12)	101.003
	203.052	§§ (13) to (16)	154.001
	203.053	7.02, § (1)	154.021
	203.151		154.022
5.02	203.051		154.024
	203.102	§ (2)	154.603
5.03, § (1)	111.060		154.041
	203.101	§ (3)	154.043
§ (2)	203.052		154.023
6.01, § (1)	152.021	7.03	—
	152.066	7.04	154.601
§ (2)	152.022	7.05	154.043
§ (3)	152.023		to
§ (4)	152.024		154.045
§ (5)	152.025	7.06, § (1)	154.021
§ (6)	152.026		154.022
§ (7)	152.027		154.024
	152.042	§ (2)	154.041
	152.121		154.043
§ (8)	152.083	§ (3)	—
6.02	152.003		154.603
6.03	152.001	7.061	154.024
	152.002	7.07	154.048
6.04, § (1)	152.041		154.049
§ (2)	152.043	7.08, § (1)	154.053



## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
7.08, § (2)	154.042	7.14, § (5)	154.001
	154.052		154.206
	154.053		154.209
§ (3)	154.054	7.15	154.301
	154.058		154.413
	154.059		154.414
	154.114	7.16, § (1)	154.001
§ (4)	154.053		154.102
	154.054		154.111
	154.513		154.114
	154.517		154.115
§ (5)	154.054		154.211
	154.307	§ (2)	154.509
§ (6)	154.043		154.510
	154.046	7.17	154.210
	154.060	7.18	154.401
§ (7)	154.055	7.19	154.402
	to	7.20	154.209
	154.057	7.21	154.114
	154.602		154.115
§ (8)	154.047	7.22	154.121
§ (9)	154.050	7.23, § (1)	154.103
	154.051		to
7.09, § (1)	154.101		154.105
	154.111		154.111
§ (2)	154.101	§ (3)	154.208
	154.105		154.209
	to	§ (4)	154.212
	154.107	§ (5)	154.111
§§ (3), (4)	154.114	§§ (6), (7)	154.112
§ (5)	154.105	§ (8)	154.113
	154.109	7.24	154.501
§ (6)	154.101	7.25	154.308
	154.108	7.26	154.521
	154.111	7.27	154.304
§ (7)	154.110	7.28	154.207
	154.115	7.29, § (1)	154.041
	154.116		154.503
§ (8)	154.117		154.515
	to	§ (2)	154.503
	154.119		154.511
§ (9)	154.120		154.515
7.10	154.041	§ (3)	154.513
	to	§ (4)	154.502
	154.043		154.514
7.11	154.152	§ (5)	154.502
	154.153	§ (6)	154.506
7.12	154.151		154.507
7.13	154.201	7.30, § (1)	154.403
	154.209		154.405
7.14, § (1)	154.202	§ (2)	154.404
	154.209	§ (3)	154.405
§ (2)	154.203	§ (4)	154.406
	154.209	7.31	154.407
§ (3)	154.204	§§ (1), (2)	154.408
§ (4)	154.205	§ (3)	154.408
	154.209		154.409

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section		Tax.-Gen. Article	Tax Code Section
7.32	154.410		8.08, § (b)	155.063
7.33	154.302		§ (c)	155.064
	154.411		8.09	155.153
7.34	154.412			155.154
7.35, § (1)	-----			155.181
§ (2)	154.305		8.10	155.141
§ (3)	154.306		8.11	155.142
7.36	154.502		8.12	155.057
	to			155.109
	154.510			155.110
7.37	154.511		8.13	155.025
	to		8.14	155.052
	154.519			155.059
7.38	154.520		8.15	155.058
7.39	154.602		8.16, § (a)	155.043
7.40	154.303			155.046
7.41	154.601			155.049
8.01	155.001		§ (b)	155.044
8.02	155.021		§ (c)	155.108
8.03	155.022			155.110
	to		§ (d)	155.113
	155.024		8.17	155.201
8.04	155.023		8.18	155.183
	155.026		8.19	155.107
	155.027		8.20	155.202
	155.111			to
8.05, § (a)	155.101			155.205
	155.110			155.209
§ (b)	155.102			155.211
	155.110		8.21	155.143
§ (c)	155.103			to
§ (d)	155.104			155.149
	155.110		8.22	155.150
§ (e)	155.105		8.23	155.151
	155.106			155.182
	155.110		8.24	155.152
8.06, § (a)	155.041		8.25, § (a)	-----
	155.045		§ (b)	155.184
	to		8.26, §§ (a) to (c)	155.202
	155.047		§ (d)	155.203
	155.049		§ (e)	155.204
§ (b)	155.048		§ (f)	155.205
	155.050		§ (g)	155.206
	155.052		§§ (h) to (l)	155.207
	to		§ (m)	155.207
	155.056			155.208
8.07	155.042		8.27	155.214
	155.049		§§ (a) to (c)	155.209
	155.052		§ (d)	155.210
	155.060		§ (e)	155.211
	155.112		§§ (f) to (j)	155.212
	155.207		§ (k)	155.212
	155.208			155.213
8.08, § (a)	155.061		8.28	155.215
§ (b)	155.059		8.29	155.049
	155.062			155.051

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
8.30	-----	9.201, § (1)	153.201
8.31	-----		153.202
8.32	155.185	§ (1)(A) to (E)	153.203
9.001	153.001	§ (1)(F)	153.202
9.002	153.002	§ (1)(G), (H)	153.203
9.003	153.003	§§ (2) to (5)	153.204
9.004	153.004	§ (6)	153.015
9.005	153.005	9.202	153.205
9.006, §§ (1) to (4)	153.006	9.203	153.206
§§ (5) to (7)	153.007	9.204	153.207
9.007	153.008	9.205	153.208
9.008	153.009	9.206	153.209
9.009	153.010	9.207	153.210
9.010, §§ (1) to (4)	153.011	9.208	153.211
§§ (5) to (7)	153.012	9.209	153.212
9.011	153.013	9.210	153.213
9.012	111.060	9.211	153.207
	153.401	9.212	153.214
9.013	153.014	9.213	153.215
9.014	153.402	9.214	153.216
9.015	153.403	9.215	153.217
9.016	153.404	9.216	153.218
9.017	153.405	9.217	153.219
9.018	153.406	9.218	153.220
9.019	153.407	9.219	153.221
9.020	-----	9.220	153.222
9.021	-----	9.221	153.223
9.101, § (1)	153.101	9.222, §§ (1) to (3)	153.224
	153.102	§ (4)	153.223
§ (1)(A) to (E)	153.104	9.223	153.225
§ (1)(F)	153.102	9.224, § (1)	153.501
§ (1)(G)	153.104	§ (2)	153.505
§§ (2) to (5)	153.103	9.301, § (1)	153.301
§ (6)	153.015	§§ (2), (3)	153.302
9.102	153.106	§ (4)	153.015
9.103	153.107	9.302	153.303
9.104	153.108	9.303	153.304
9.105	153.109	9.304	153.305
9.106	153.110	9.305	153.306
9.107	153.106	9.306	153.303
9.108	153.111	9.307	153.307
9.109	153.112	9.308	-----
9.110	153.113	9.309	153.308
9.111	153.114	9.310	153.309
9.112, §§ (1) to (5)	153.105	9.311	153.310
§ (6)	153.115	9.312	153.311
9.113	153.116	9.313, § (1)	153.501
9.114	153.117	§ (2)	153.504
9.115	153.118	11.02	182.121
9.116	153.119	§ (1)	182.001
9.117	153.120		182.002
9.118	153.121		182.081
9.119	153.122		182.082
9.120, § (1)	153.501	§ (2)	182.003
§ (2)	153.502		182.004
§§ (3), (4)	153.503		

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
11.03, § (1)	-----182.021	12.06, § (1)	-----171.155
	182.022	§ (2)	-----171.151
	182.026		to
	182.081		171.153
	182.082		171.155
§ (2)	-----182.023		171.201
§ (3)	-----182.024	§ (3)	-----171.156
	to	§ (4)	-----171.157
	182.026	12.065	-----171.152
§ (4)	-----	12.07	-----171.204
11.04	-----182.041	12.08	-----171.153
	182.042		171.202
	182.081	12.09	-----171.201
	182.082	12.10, § (a)	-----171.203
	182.121		171.206
11.06	-----182.121		171.207
§ (1)	-----182.061		171.209
	182.062	§ (b)	-----171.210
	182.064	12.10A	-----171.208
	182.081		171.361
	182.082	12.11	-----171.201
§ (2)	-----182.063		to
	182.064		171.203
11.07	-----182.083		171.354
11.08	-----182.084	12.12	-----171.201
	182.085		to
11.09	-----182.103		171.203
	182.104		171.205
11.10	-----182.101		171.207
11.11	-----111.060		171.211
	182.102		171.251
12.01, § (1)	-----171.001		171.301
	171.002	12.13	-----171.356
	171.101		to
	171.151		171.360
	171.154	12.14, § (1)	-----111.060
	171.202		171.362
§ (2)	-----171.003	§ (2)	-----171.251
§ (6)	-----171.107		to
12.02, § (1)(a)	-----171.106		171.254
§ (1)(b)	-----171.103		171.257
§ (1)(c)	-----171.104	§ (3)	-----171.255
§ (1)(d)	-----171.105	12.15	-----171.256
§ (2)	-----171.108		171.258
12.03, § (1)	-----171.052		171.301
	to		to
	171.068		171.303
	171.081	12.16, § (1)	-----171.303
	to		171.351
	171.083		to
	171.107		171.353
§§ (2) to (4)	-----171.063	§ (2)	-----171.355
§§ (5), (6)	-----171.051	12.17, § (1)	-----171.304
12.04	-----171.158	§ (2)	-----171.309
12.05	-----		to
			171.311

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
12.17, § (3)	171.255	14.22	211.203
	171.305		to
	to		211.207 Rep.
	171.308	18.01	181.001
	171.312		181.002
	to	18.02, § (1)	181.003
	171.315		181.051
12.18	171.005	§ (2)	181.052
	171.102	§ (3)	181.103
12.19, § (1)	171.004	18.03	111.060
§ (2)	171.004		181.101
§ (3)	171.202		181.102
	171.206		181.104
	171.211		181.105
12.22	---	18.04	181.004
14.00A, §§ (a), (d) to (s)	211.001		181.151
§ (c)	211.002	19.01	191.121
14.00B	211.003	§ (2)	191.001
14.01			to
to			191.003
14.12	---	§ (7)	191.021
14.12A	211.051		to
14.12B	211.052		191.023
14.12C	211.053	§ (7)(a)	191.026
14.12D	211.054	§ (7)(b)	191.024
14.12E	211.055	§ (7)(d)	191.025
14.13, § (B)	211.110	§ (9)	191.041
	211.251		191.042
	211.255	§ (10)(a)	191.062
§ (C)	211.056	§ (10)(b)	191.061
§ (D)	211.109	§ (10)(c)	191.063
14.14	---		191.064
14.15	211.262 Rep.	19.02, § (1)	---
14.16, § (A)	211.102	§ (2)	191.081
	211.103		191.082
§ (B)	211.104		191.121
§ (C)	211.105	§ (3)	191.083
§ (D)	211.106		191.084
§ (E)	211.101	§ (4)	191.085
	211.107	§ (5)	111.060
	211.301		191.086
14.17	111.060		to
	211.258		191.088
	211.259	19.03	191.102
14.18, § (A)	211.252	19.04	191.101
	211.253	20.01	151.001
§ (B)	211.254		151.002
§ (C)	211.253	§ (C)	151.003
	211.255	§ (D)(1)	151.007
14.19, § (A)	211.256		151.427
§ (B)	211.257	§ (D)(2)	151.007
14.20, § (A)	211.108	§ (E)	151.004
§ (B)	211.201	§ (F)	151.304
§ (C)	211.201	§ (G)	151.005
14.21	211.202 Rep.	§ (H)	151.007
		§ (I)	151.052

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
20.01, § (J)(1)	151.008	20.031, § (A)	151.102
§ (J)(2)	151.024	§ (B)	151.103
§ (K)	151.005		151.107
§ (L)	151.007	§ (C)	151.704
§ (M)	151.008	§ (D)	151.704
§§ (N), (O)	151.011		151.705
§ (P)	151.009	§ (E)	151.106
§ (Q)	101.003	§ (F)	151.104
§ (R)	151.011	§ (G)	151.104
§ (S)	151.006		151.151
§ (T)	151.056	§ (H)	151.152
§ (U)	151.318	§ (I)	151.154
§ (W)	151.010	§ (J)	151.707
§ (X)	151.801	§ (K)	151.153
§ (Y)(1)	151.319	§ (L)	151.105
§ (Y)(2)	151.320	§ (M)	151.106
§ (AA)	151.002	§ (N)	151.028
20.02	151.051		151.702
20.021, § (A)	151.007	20.04, § (A)	151.301
	151.052	§ (B)(1), (2)	151.155
	151.053	§ (B)(3)	151.706
	151.701	§ (C)	151.307
§ (B)	151.704	§ (D)(1)	151.308
§ (C)	151.202	§ (D)(2)	151.315
§ (D)	151.201	§ (D)(3)	151.323
§ (E)	151.203	§ (D)(4), (5)	151.308
	to	§ (E)(1)	151.318
	151.205	§ (E)(2)	151.321
§ (F)	151.054	§ (E)(3)	151.322
§ (G)	151.054	§ (F)	151.314
	151.151	§ (G)	151.330
§ (H)	151.152	§ (H)(1) to (5)	151.309
§ (I)	151.154	§ (H)(6)	151.310
§ (J)	151.707	§ (H)(7)	151.332
§ (K)	151.153	§ (I)	151.304
§§ (L), (M)	151.426	§§ (J), (K)	151.303
§ (N)(1)	151.251	§ (L)	151.314
	151.253	§ (M)	151.313
§ (N)(2)	151.251	§ (N)	151.316
	151.252	§ (O)(1)	151.302
§ (N)(3)	151.251	§ (O)(2), (3)	151.055
	151.254	§ (P)	151.324
	151.255		151.329
§ (N)(4)	—	§ (Q)	151.328
§ (N)(5)	151.254	§ (R)	151.317
	151.255	§ (S)	151.331
§ (N)(6)	151.257	§ (T)	151.312
	151.259	§ (U)	151.305
	to	§ (V)	151.306
	151.262	§ (W)	151.324
§ (N)(7)	151.262	§ (X)	151.324
§ (N)(8)	151.256	§ (Y)	151.311
	151.261	§ (Z)	151.327
	151.262	§ (AA)	151.310
20.03	151.101	§ (BB)(1)	151.319
		§ (BB)(2)	151.321

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section		Tax.-Gen. Article	Tax Code Section
20.04, § (BB)(3), (4)	151.319		20.08, § (F)	151.514
§ (CC)	151.325		§ (G)	111.060
§ (DD)	151.310			151.512
§ (EE)	151.314		20.09, § (A)	151.609
§ (FF)	151.320		§ (B)	151.601
	151.326			151.607
§ (GG)	151.310		§ (C)	151.601
§ (JJ)	151.310		§ (D)	151.605
20.05, § (A)	151.401		§ (E)	151.603
§ (B)	151.410		§ (F)	151.606
	151.411		§ (G)(1)	151.601
§ (C)(1)	151.402			to
	151.406			151.604
§ (C)(2)	151.403			151.606
§ (C)(3)	151.406			151.607
§ (C)(4)	151.408		§ (G)(2) to (4)	151.608
§ (C)(5)	151.404		§ (H)(1)	151.610
§ (D)	151.406		§ (H)(2)	151.611
§ (E)	151.423		§ (H)(3), (4)	151.612
	to		§ (I)	151.613
	151.425		§ (J)	151.251
§ (F)	151.405			151.258
§ (G)	151.409		20.11, § (A)	151.022
§ (H)	111.060		§ (B)	151.021
	151.703		§ (C)	151.025
§ (I)(1)(a)	151.412		§ (D)	151.023
§ (I)(1)(b)	151.413		§ (E)	151.026
§ (I)(1)(c)	151.414		§ (F)	151.407
§ (I)(2)	151.412		§ (G)	151.027
§ (I)(3)	151.415		20.12, § (A)	151.708
§ (J)	151.416		§ (B)	151.707
§ (K)	151.417		§ (C)	151.709
§ (K)(1)	151.419		§ (D)	151.710
§ (K)(2)	151.418		§ (E)	151.711
§ (K)(3)	151.420		20.13	151.801
	151.422		20.14	151.029
§ (K)(4)	151.421		20.15	—
	151.422		20.16	151.614
20.06, § (A)(1)	151.501		20.17	151.615
	151.515		23.01, § (a)	156.001
§ (A)(2)	151.504		§§ (b) to (d)	156.051
§ (B)	151.502		§§ (e), (f)	—
§ (C)	151.514		§ (g)	156.001
§ (D)	151.507		§ (h)	156.101
§ (E)(1)	151.503		23.02, § (a)	156.051
§ (E)(2)	151.504			156.052
§ (F)	151.508		§ (b)	156.101
§ (G)	151.514		§ (c)	156.102
20.07, §§ (A), (B)	151.506		23.03	156.053
§ (C)	151.509		23.04, § (1)	156.151
20.08, § (A)(1)	151.509		§ (2)	156.153
§ (A)(2)	151.505		23.05	156.152
§ (B)	151.510		23.06	156.203
§ (C)	151.511		23.07	111.060
§ (D)	—			156.201
§ (E)	151.513			156.202

## DISPOSITION TABLE

Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article	Tax Code Section
24.01, § (1) -----	154.603	24.01, § (1) -----	203.152
	155.241	§§ (2), (3) -----	101.009
	156.251		
	171.401		
	181.202		
	182.122		
	191.122		
	201.404		
	202.353		
		<b>General &amp; Special Laws Citation</b>	<b>Tax Code Section</b>
		47th Leg., Ch. 184, § 1 (§ 8) -----	
		47th Leg., Ch. 269, § 8 -----	
		58th Leg., Ch. 441, § 3 -----	202.002

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## DERIVATION TABLE

Showing where provisions of the Tax Code were formerly covered in the Civil Statutes, the Education and Water Codes, and Title 122A, Taxation—General.

Tax Code Section	Former Provisions	Tax Code Section	Former Provisions
1.04(2), (3) -----	1036	6.24 -----	Water C. §§ 51.595
	7146		54.637
(4) -----	1037		58.595
	7147	6.27 -----	Water C. §§ 51.596
(7) -----	7149		58.596
	7174	(b) -----	Water C. §§ 56.075
(12) -----	7244c, § 6		56.298
(14), (15) -----	Educ. C. § 23.91		57.255
	Water C. §§ 53.191		57.345
	63.292	6.28 -----	7247
1.05 -----	7244c, § 6.1		7248
5.01 -----	Educ. C. § 11.72		7249
	(part)	6.29 -----	1044
5.02 -----	Educ. C. § 11.73	(a) -----	Educ. C. § 23.93(b)
5.03 -----	Educ. C. § 11.74		Water C. §§ 51.086
5.04 -----	Educ. C. § 11.75		53.074
5.05 -----	Educ. C. § 11.77		55.117
5.06 -----	Educ. C. § 11.83		63.102
5.07 -----	7210	(b) -----	Educ. C. §§ 18.13
	Educ. C. § 11.84		(d)
5.08 -----	Educ. C. § 11.85		23.97(c)
6.21(a) -----	7245		Water C. §§ 56.074
	7246		57.175
(b) -----	7246—½		62.253
6.22 -----	Water C. §§ 51.595	6.30 -----	Water C. §§ 55.610
	54.637		(a)
	58.595		57.281
(c) -----	1042b		58.591
	7359		63.294
	Educ. C. § 23.94	(a) -----	7332
6.23 -----	Water C. §§ 51.595		7333
	54.637	(b) -----	7335b
	58.595		Educ. C. § 23.98
(a) -----	1042b	(c) -----	7335
	7044		7335a
	7044a		Educ. C. § 23.98
	7254		Water C. § 55.617
	7359	(d), (e) -----	7335a
	Educ. C. § 23.94	6.41 -----	1048
(b) -----	1044		7212
	1066b		Water C. §§ 51.571
	Educ. C. § 23.95(e)		53.078
6.24 -----	1066b		53.079
	Educ. C. § 23.95(e)		54.614

## DERIVATION TABLE

Tax Code Section	Former Provisions	Tax Code Section	Former Provisions
6.41 -----	55.585(a) 63.288(a)	11.18 -----	7150, §§ 6, 7, 14, 20, 22 (2nd), 22a, 23 (both), 27, 28 (1st)
6.42(a) -----	1049 Water C. §§ 51.575 54.618 55.585(c) 58.575 63.288(c)	11.19 -----	7150, §§ 2, 2a, 15 7150e
(b) -----	1049 Water C. §§ 51.572 51.576 53.082 54.615 54.619 55.585(b) 58.572 58.576 63.288(b) 63.290	11.20 -----	7150, §§ 1, 1(a) 7150b
(c) -----	1056 Water C. §§ 51.574 53.083 54.617 55.587 58.574	11.21 -----	7150, § 1
6.43 -----	7212	11.22 -----	7150h
11.01(a) -----	7145	11.23(a) -----	7150, § 20
(b) -----	7146 7153	(b) -----	7150, § 19
(c) -----	7147 7153	(c) -----	7150, § 25
(d) -----	7150f	(d) -----	7150d
11.02 -----	7147 7150.6 7175 7176	(e) -----	7150, § 21
(a) -----	7150, § 12 7244a	(f) -----	7150, § 13
(b) -----	7165 7166	(g) -----	7150g
(c) -----	7153	(h) -----	7150, § 29
(d) -----	7165 7166	(i) -----	7150, § 15 7150e
11.11(a) -----	46d-16 7150, §§ 4, 4a, 5, 8, 9, 10	(j) -----	7150, § 28 (2nd)
(b) -----	7150c, § 1	11.24 -----	7150i
(c) -----	Educ.C. § 17.84	11.25 -----	7150.3
11.12 -----	5248	11.26 -----	7150.5
11.13 -----	1301a, § 17 7150.4 7150.5	11.27 -----	7150.1
11.14 -----	7150, § 11 7150.2	11.42(b) -----	7151
11.17 -----	964 7150, § 3	11.43 -----	7150, § 1 7150.5
		11.44 -----	7150.5 7150j
		21.01 -----	7153
		21.02 -----	7147a 7153 7169a
		21.04 -----	7169
		21.06(a) -----	7153
		(b) -----	7158
		21.07 -----	7105 7105a 7113
		21.09 -----	7166
		22.01 -----	1043 7151 7152 7160 Water C. §§ 51.563 53.193 54.606 55.584 58.563 63.286
		22.04 -----	7148 7243
		22.05 -----	7159
		22.06 -----	7168 7165

## DERIVATION TABLE

Tax Code Section	Former Provisions	Tax Code Section	Former Provisions
22.21 -----	Water C. §§ 51.563 54.606 58.563 63.286	23.52 -----	7174A, § 2
22.22 -----	1044 7189 Water C. §§ 51.563 54.606 58.563 63.286	23.53 -----	7174A, § 3
22.23 -----	7151 Water C. §§ 51.563 53.193 54.606 55.584 58.563 63.286	23.54 -----	7174A, § 4
22.24 -----	7159 7162 7164 Water C. §§ 51.563 54.606 58.563 63.286	23.55 -----	7174A, § 5
22.25 -----	1043 7153 7159 7185 Water C. §§ 51.563 54.606 58.563 63.286	23.56 -----	7174A, § 6
22.26 -----	7161 7170 7184 Water C. §§ 51.563 54.606 58.563 63.286	23.71 -----	7174B, § 1
(a) -----	Water C. §§ 51.565 54.608 58.565	23.72 -----	7174B, § 2
(b) -----	Water C. §§ 51.566 54.609 58.566	23.73 -----	7174B, § 3
23.01 -----	7174 Educ.C. § 22.11(b)	23.74 -----	7174B, § 4
(a) -----	Water C. §§ 53.195 55.582	23.75 -----	7174B, § 5
23.02 -----	7150o	23.76 -----	7174B, § 6
23.11 -----	7165 7166	23.77 -----	7174B, § 7
23.13 -----	7174	23.78 -----	7174B, § 8
23.15 -----	7244	23.81 -----	7150n, § 1
23.18 -----	7150l	23.82 -----	7150n, § 2
23.51 -----	7174A, § 1	23.83 -----	7150n, § 3
		23.86 -----	7150n, § 4
		23.87 -----	7150n, § 4
		24.01 -----	7105 7105a
		24.02 -----	7106 7107 7115
		24.03 -----	7108 7114
		24.04 -----	7114
		24.06 -----	7111
		24.07 -----	7105 7105a 7111
		24.08 -----	7110
		24.09 -----	7110
		24.11 -----	7113
		24.12 -----	7208
		24.14 -----	7116
		24.31 -----	to
		24.33 -----	7169
		24.35 -----	to
		24.38 -----	7169
		24.40 -----	7208
		25.01 -----	7189
		25.02 -----	7171 7204 7205
		(a)(1) -----	Water C. §§ 51.567 (c), (d) 54.610(c), (d) 58.567(c), (d)
		25.03 -----	7204 7205
		25.07 -----	7173
		(a) -----	5248
		25.08 -----	7146
		(b) -----	5248

## DERIVATION TABLE

Tax Code Section	Former Provisions	Tax Code Section	Former Provisions
25.09	1301a, § 22 7150m	31.02	54.629(a) 55.599 58.586 58.587(a)
25.10(b)	7173	31.03(a)	7336
25.13	7173	(b)	1066b, § 1b
25.14	7165 7166	31.05	7255b
25.15	7147a	31.06(a)	1066 7049
25.16	7151	(b)	7261a
25.17	7154	31.07	7272
25.19	7185 7244c Educ.C. § 20.03(e)	31.08	7258b
25.21	1047 7207 7208	31.09	7249a 7260 1044
25.22	7218 7222 Water C. §§ 53.195 55.582	31.10	7260 7261 Water C. §§ 53.192 55.598
25.23	7209	31.11	7261
26.01	7219 7220 7224 Educ.C. § 20.03(a)	32.01	7261.1 7172 Educ.C. §§ 18.27 22.11(f)
26.04	7244c Educ.C. § 20.03(c)		Water C. §§ 51.587 (a)
26.05	7044a 7045 7244c Educ.C. § 20.03 (a), (d)		54.629(a) 55.603(a) 58.587(a) 63.291
26.05(a)	Water C. § 54.602 (a)	32.02	7172
26.06	7244c Educ.C. § 20.03(d)	32.05(b), (c)	7269
26.09(d)	1047 7207 7208	32.06	7345a
26.10	7151	32.07(a)	7151
26.11	7151	(b)	7147a 7173
31.01	1057 7253 7255	33.01	1066b, § 1 7336 Water C. §§ 51.588 54.630 55.605 58.588
(a)	Educ.C. § 20.03(f) Water C. §§ 51.586 53.199 54.628 55.599 58.586	33.02	7345c
(b)	7150c, §§ 5, 6	33.03	7263 7321 7336 Water C. §§ 51.589 54.631 55.607 58.589 63.293
(c)	Educ.C. § 20.03(g)		
31.02	7336 Water C. §§ 51.586 51.587(a) 53.199 54.628	33.04	7324
		33.05(a)	7298 7336f
		33.06	7329a
		33.21	1060

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Tax Code Section	Former Provisions	Tax Code Section	Former Provisions
33.21	7266	34.01	58.593
	to	(b)	Water C. § 55.614
	7268	(c)	1062
	Water C. § 55.606	(d)	Water C. § 63.296
33.24	7268		1059
33.41	7326		Water C. §§ 55.616
	Water C. §§ 51.587		57.284
	(c)	34.02	7345b, § 8
	51.592	34.03	7345b, § 8
	54.629(c)		Water C. § 55.615
	54.634	34.04	7345b, § 8
	55.610(a), (c)	34.05	7345b, § 9
	57.280(a)	34.06	7345b, § 9
	57.283	34.07	7345b, § 10a
	58.587(c)	34.08	7345b, § 1
	58.592	34.21	Water C. §§ 51.594
	63.295		54.636
(a)	7345b-1		55.613
(b)	7345b, § 11		58.594
33.42	7326	(a)	1065
	7332		7345b, § 12
	Water C. §§ 51.592	(b)	7284
	54.634		7285
	58.592	34.22	7341
33.43	7328.1	34.23	7345b, § 12-a
	Water C. §§ 55.610	41.01	1050
	(b)	(1)	7206
	57.283		7211
33.44	7345b, § 2		7212
33.45	7345b, § 4		Water C. §§ 51.577
33.46	7345b, § 15		(a), (c), (d)
33.47	7321		54.620(a), (c), (d)
	7326		55.588(a), (c), (d)
33.48	7333		55.589(a)
	7345b, § 6	(4)	58.577(a), (c), (d)
	Water C. § 55.618		7346
33.49(a)	7333		7347
(b)	7345b-2	41.08	Water C. §§ 51.577
33.50(a)	7345b, § 5		(a), (c), (d)
(b)	7345b, § 8		54.620(a), (c), (d)
33.51	7345b, § 12		55.588(a), (c), (d)
33.52	7326a		55.589(a)
	Water C. § 57.284	41.09	58.577(a), (c), (d)
33.53	7328		7206
	Water C. §§ 51.587		Water C. §§ 51.577
	(b)		(a), (c), (d)
	54.629(b)		54.620(a), (c), (d)
	55.603(b)		55.588(a), (c), (d)
	57.284		55.589(a)
	58.587(b)	41.10	58.577(a), (c), (d)
33.54	7345b-3		Water C. §§ 51.577
34.01	1058		(a), (c), (d)
	1148		54.620(a), (c), (d)
	7328		55.588(a), (c), (d)
	7330		55.589(a)
	7345b, §§ 7, 9		58.577(a), (c), (d)
	Water C. §§ 51.593	41.11	1053
	54.635		7206
			Water C. § 51.581

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Tax Code Section	Former Provisions	Tax Code Section	Former Provisions
41.11 -----	54.624	41.45 -----	54.625
	55.591		55.589(b)
	58.581		55.592
41.12 -----	1055		58.580
	7219		58.582
	7220	41.46 -----	1053
	7222		Water C. §§ 51.581
	7224		54.624
	Water C. §§ 51.583		55.591
	53.196		58.581
	54.626	41.47 -----	1054
	55.593		Water C. § 55.592
	55.594	41.61 -----	1050
	58.583		7206
41.41 -----	1051		Water C. §§ 51.577
	7211		(b)
	Water C. §§ 51.578		54.620(b)
	54.621		55.588(b)
	55.589(b)		58.577(b)
	58.578	41.67(a) -----	1050
41.42 -----	7156		7206
41.44 -----	1051	41.68 -----	Water C. §§ 51.575
	7211		53.082
	Water C. §§ 51.578		54.618
	54.621		58.575
	55.589(b)		63.288(c)
	58.578	42.01 -----	7345f, § 1
41.45 -----	1051	42.21 -----	7345f, § 1
	7211	42.22 -----	7345f, § 2
	Water C. §§ 51.580	42.23(c) -----	7345f, § 3
	51.582	42.27 -----	7345f, § 4
	54.623		

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101.003	1.01	111.060	14.17
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	7.01, §§ (10), (12)		19.02, § (5)
	20.01, § (Q)		20.05, § (H)
101.004			20.08, § (G)
to			23.07
101.006	1.01	111.101	1.032A, § (b)
101.008	1.09	111.102	1.032A, § (a)
101.009	24.01(2), (3)	111.103	1.032A, § (c)
111.001	Civ.St. 7047a-20,	111.104	1.11A, §§ (1) to
	§ 1		(4), (12)
111.002	1.10	111.105	1.11A, §§ (4) to
	Civ.St. 7047a-20,		(6)
	§§ 2, 3, 6	111.106	1.11A, § (11)
111.003	1.03	111.107	1.045, § (G)
111.004	1.031, §§ (1), (2)	111.108	1.11A, § (15)
111.0041	1.031A	111.201	1.045, § (A)
111.0042	1.036	111.202	1.045, § (B)
111.0043	1.037	111.203	1.045, § (C)
111.0044	1.038	111.204	1.045, § (D)
111.005	1.031, § (1)	111.205	1.045, § (A)
111.006	1.031, §§ (3), (4)	111.206	1.045, § (F)
	1.035, § (1)	111.207	1.045, § (E)
111.007	1.035, § (2)	111.251	1.07, § (1)(h)(i)
111.008	1.032, §§ (A), (B)	111.252	1.07, § (1)(h)(i)
111.009	1.032, §§ (C), (D)	111.253	1.07, § (1)(h)(ii)
111.010	1.04	111.254	1.07, § (1)(h)(iii)
111.011	1.14, §§ (a), (b)	111.255	1.07, § (1)(h)(v)
111.012	1.14, § (c)	112.001	1.05, § (2)
111.013	1.08		1.06, § (6)
	Civ.St. 7047a-20,		Civ.St. 7057b, § 2
	§ 4	112.051	1.05, § (1)
111.014	1.15		Civ.St. 7057b, § 1
111.015	1.07, §§ (1)(d),	112.052	
	(3)	to	
	1.11A, § (13)	112.055	1.05, § (2)
111.016	1.07, § (2)		Civ.St. 7057b, § 2
111.051	1.034	112.056	1.05, § (3)
111.052	1.033		Civ.St. 7057b, § 2a
111.053	1.13, § (e)	112.057	1.05, §§ (2), (3)
111.054	1.13, §§ (a), (b),		Civ.St. 7057b, §§
	(g)	112.058	2, 2a
111.055	1.13, § (c)		1.05, § (4)
111.056	1.13, § (d)		Civ.St. 7057b, § 3
111.057	1.13, § (h)	112.059	1.05, § (5)
111.058	1.13, § (i)		Civ.St. 7057b, § 4
111.059	1.12	112.060	1.05, § (5)
111.060	3.03, § (4)		7057b, § 4
	4.03, § (10)	112.101	1.06, §§ (1), (2)
	4.06	112.102	1.06, § (3)
	5.03, § (1)	112.103	1.06, § (4)
	6.06, § (1)	112.104	1.06, §§ (2), (5)
	9.012	112.105	1.06, §§ (5), (7)
	11.11	112.106	1.06, §§ (8), (9)
	12.14, § (1)	112.107	1.06, § (10)
		112.151	1.11A, §§ (6), (7)



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Tax Code Section	Tax.-Gen. Article	Tax Code Section	Tax.-Gen. Article
112.152	1.11A, §§ (6), (8)	151.022	20.11, § (A)
112.153	1.11A, § (6)	151.023	20.11, § (D)
112.154	1.11A, § (8)	151.024	20.01, § (J)(2)
112.155	1.11A, §§ (9), (10)	151.025	20.11, § (C)
112.156	1.11A, § (14)	151.026	20.11, § (E)
113.001	1.07, § (1)(b)	151.027	20.11, § (G)
113.002	1.07, § (1)(e)(i)	151.028	20.031, § (N)
113.003	1.07, § (1)(e)(ii)	151.029	20.14
113.004	1.07A, § (1)(a)	151.051	20.02
113.005	1.07A, § (1)(b) to (e) 1.07A-1	151.052	20.01, § (I) 20.021, § (A)
113.006	1.07, § (1)(e)(i) 1.07A, § (1)(d)	151.053	20.021, § (A)
113.007	1.07A, § (2)(a)(i)	151.054	20.021, §§ (F), (G)
113.008	1.07A, § (4)	151.055	20.04, § (O)(2), (3)
113.009	1.07A, § (2)(a) (ii), (iii)	151.056	20.01, § (T)
113.010	1.07A, § (3)	151.101	20.03
113.011	1.07A, § (2)(a) (iv)	151.102	20.031 § (A)
113.101	1.07, § (1)(c)	151.103	20.031, § (B)
113.102	1.07, § (1)(f)(i)	151.104	20.031, §§ (F), (G)
113.103	1.07, § (1)(f)(ii)	151.105	20.031, § (L)
113.104	1.07, § (1)(g)	151.106	20.031, §§ (E), (M)
113.105	1.07B, § (1)	151.107	20.031, § (B)
113.106	1.07B, §§ (2), (3)	151.151	20.021, § (G) 20.031, § (G)
113.107	1.07B, § (4)	151.152	20.021, § (H) 20.031, § (H)
113.201	1.07C, § 1	151.153	20.021, § (K) 20.031, § (K)
113.202	1.07C, § 2	151.154	20.021, § (I) 20.031, § (I)
113.203	1.07C, § 3	151.155	20.04, § (B)(1), (2)
113.204	1.07C, § 4	151.201	20.021, § (D)
113.205	1.07C, § 5	151.202	20.021, § (C)
113.206	1.07C, § 6	151.203	to
141.001	Civ. St. 7359a, § 1	151.205	20.021, § (E)
141.002	Civ. St. 7359a, § 2	151.251	20.021, § (N)(1) to (3) 20.09, § (J)
141.003	Civ. St. 7359a, § 3	151.252	20.021, § (N)(2)
141.004	Civ. St. 7359a, § 4	151.253	20.021, § (N)(1)
141.005	Civ. St. 7359a, § 5	151.254	20.021, § (N)(3), (5)
151.001	20.01	151.255	20.021, § (N)(3), (5)
151.002	20.01 (part) 20.01, § (AA)	151.256	20.021, § (N)(8)
151.003	20.01, § (C)	151.257	20.021, § (N)(6)
151.004	20.01, § (E)	151.258	20.09, § (J)
151.005	20.01, § (G), (K)	151.259	20.021, § (N)(6)
151.006	20.01, § (S)	151.260	20.021, § (N)(6)
151.007	20.01, §§ (D)(1), (2), (H), (L) 20.021, § (A)	151.261	20.021, § (N)(6), (8)
151.008	20.01, §§ (J)(1), (M)		
151.009	20.01, § (P)		
151.010	20.01, § (W)		
151.011	20.01, §§ (N), (O), (R)		
151.021	20.11, § (B)		

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151.262	20.021, § (N)(6) to (8)	151.410	20.05, § (B)
151.301	20.04, § (A)	151.411	20.05, § (B)
151.302	20.04, § (O)	151.412	20.05, § (I)(1)(a), (2)
151.303	20.04, §§ (J), (K)	151.413	20.05, § (I)(1)(b)
151.304	20.01, § (F) 20.04, § (I)	151.414	20.05, § (I)(1)(c)
151.305	20.04, § (U)	151.415	20.05, § (I)(3)
151.306	20.04, § (V)	151.416	20.05, § (J)
151.307	20.04, § (C)	151.417	20.05, § (K)
151.308	20.04, § (D)(1), (4), (5)	151.418	20.05, § (K)(2)
151.309	20.04, § (H)(1) to (5)	151.419	20.05, § (K)(1)
151.310	20.04, §§ (H)(6), (AA), (DD), (GG), (JJ)	151.420	20.05, § (K)(3)
151.311	20.04, § (Y)	151.421	20.05, § (K)(4)
151.312	20.04, § (T)	151.422	20.05, § (K)(3), (4)
151.313	20.04, § (M)	151.423	to
151.314	20.04, §§ (F), (L), (EE)	151.425	20.05, § (E)
151.315	20.04, § (D)(2)	151.426	20.021, §§ (L), (M)
151.316	20.04, § (N)	151.427	20.01, § (D)(1)
151.317	20.04, § (R)	151.501	20.06, § (A)(1)
151.318	20.01, § (U) 20.04, § (E)(1)	151.502	20.06, § (B)
151.319	20.01, § (Y)(1) 20.04, § (BB)(1), (3), (4)	151.503	20.06, § (E)(1)
151.320	20.01, § (Y)(2) 20.04, § (FF)	151.504	20.06, §§ (A)(2), (E)(2)
151.321	20.04, §§ (E)(2), (BB)(2)	151.505	20.08, § (A)(2)
151.322	20.04, § (E)(3)	151.506	20.07, §§ (A), (B)
151.323	20.04, § (D)(3)	151.507	20.06, § (D)(1), (2)
151.324	20.04, §§ (P), (W), (X)	151.508	20.06, § (F)
151.325	20.04, § (CC)	151.509	20.07, § (C)
151.326	20.04, § (FF)	151.510	20.08, § (A)(1)
151.327	20.04, § (Z)	151.511	20.08, § (B)
151.328	20.04, § (Q)	151.512	20.08, § (C)
151.329	20.04, § (P)	151.513	20.08, § (G)
151.330	20.04, § (G)	151.514	20.08, § (E)
151.331	20.04, § (S)	151.514	20.06, §§ (C), (G) 20.08, § (F)
151.332	20.04, § (H)(7)	151.515	20.06, § (A)(1)
151.401	20.05, § (A)	151.601	20.09, §§ (B), (C), (G)(1)
151.402	20.05, § (C)(1)	151.602	20.09, § (G)(1)
151.403	20.05, § (C)(2)	151.603	20.09, §§ (E), (G)(1)
151.404	20.05, § (C)(5)	151.604	20.09, § (G)(1)
151.405	20.05, § (F)	151.605	20.09, § (D)
151.406	20.05, §§ (C)(1), (3), (D)	151.606	20.09, §§ (F), (G)(1)
151.407	20.11, § (F)	151.607	20.09, §§ (B), (G)(1)
151.408	20.05, § (C)(4)	1511.608	20.09, § (G)(2) to (4)
151.409	20.05, § (G)	151.609	20.09, § (A)
		151.610	20.09, § (H)(1)
		151.611	20.09, § (H)(2)

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151.612	20.09, § (H)(3), (4)	152.089	6.09, § (6)
151.613	20.09, § (I)	152.101	6.05, § (1)
151.614	20.16	152.102	6.08
151.615	20.17	152.103	6.06, § (2)
151.701	20.021, § (A)	152.121	6.01, § (7)
151.702	20.031, § (N)		6.07
151.703	20.05, § (H)	153.001	9.001
151.704	20.021, § (B)	153.002	9.002
	20.031, §§ (C), (D)	153.003	9.003
151.705	20.031, § (D)	153.004	9.004
151.706	20.04, § (B)(3)	153.005	9.005
151.707	20.021, § (J)	153.006	9.006, §§ (1) to (4)
	20.031, § (J)	153.007	9.006, §§ (5) to (7)
	20.12, § (B)	153.008	9.007
151.708	20.12, § (A)	153.009	9.008
151.709	20.12, § (C)	153.010	9.009
151.710	20.12, § (D)	153.011	9.010, §§ (1) to (4)
151.711	20.12, § (E)	153.012	9.010, §§ (5) to (7)
151.801	20.01, § (X)	153.013	9.011
	20.13	153.014	9.013
152.001	6.03	153.015	9.101, § (6)
	6.09, §§ (2), (3), (3)(c)		9.201, § (6)
152.002	6.03, § (D)		9.301, § (4)
152.003	6.02	153.101	9.101, § (1)
152.021	6.01, § (1)	153.102	9.101, §§ (1), (1) (F)
152.022	6.01, § (2)	153.103	9.101, §§ (2) to (5)
152.023	6.01, § (3)	153.104	9.101, § (1)(A) to (E), (G)
152.024	6.01, § (4)	153.105	9.112, §§ (1) to (5)
	6.05, § (1)	153.106	9.102
152.025	6.01, § (5)		9.107
152.026	6.01, § (6)	153.107	9.103
152.027	6.01, § (7)	153.108	9.104
152.041	6.04, § (1)	153.109	9.105
152.042	6.01, § (7)	153.110	9.106
152.043	6.04, § (2)	153.111	9.108
152.044	6.06, § (1)	153.112	9.109
152.045	6.04, §§ (3), (4)	153.113	9.110
152.046	6.04, §§ (5) to (7)	153.114	9.111
152.061	6.041	153.115	9.112, § (6)
152.062	6.05, § (1)	153.116	9.113
152.063	6.05, §§ (2), (3)	153.117	9.114
152.064	6.07	153.118	9.115
152.065	6.04, § (3)	153.119	9.116
152.066	6.01, § (1)	153.120	9.117
152.067	6.06, § (1)	153.121	9.118
152.068	6.042	153.122	9.119
152.081	6.09, § (1)	153.201	9.201, § (1)
152.082	6.09, § (3)	153.202	9.201, §§ (1), (1) (F)
152.083	6.01, § (8)	153.203	9.201, § (1)(A) to (E), (G), (H)
152.084	6.09, § (4)	153.204	9.201, §§ (2) to (5)
152.085	6.09, § (5)	153.205	9.202
152.086	6.09, § (3)(a), (b)	153.206	9.203
152.087	6.09, § (2)		
152.088	6.09, § (3)		

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153.207 -----	9.204	154.023 -----	7.02, § (3)
	9.211	154.024 -----	7.02, § (1)
153.208 -----	9.205		7.06, § (1)
153.209 -----	9.206		7.061
153.210 -----	9.207	154.041 -----	7.02, § (2)
153.211 -----	9.208		7.06, § (2)
153.212 -----	9.209		7.10
153.213 -----	9.210		7.29, § (1)
153.214 -----	9.212	154.042 -----	7.08, § (2)
153.215 -----	9.213		7.10
153.216 -----	9.214	154.043 -----	7.02, § (2)
153.217 -----	9.215		7.05
153.218 -----	9.216		7.06, § (2)
153.219 -----	9.217		7.08, § (6)
153.220 -----	9.218		7.10
153.221 -----	9.219	154.044 -----	7.05
153.222 -----	9.220	154.045 -----	7.05
153.223 -----	9.221	154.046 -----	7.08, § (6)
	9.222, § (4)	154.047 -----	7.08, § (8)
153.224 -----	9.222, §§ (1) to (3)	154.048 -----	7.07
153.225 -----	9.223	154.049 -----	7.07
153.301 -----	9.301, § (1)	154.050 -----	7.08, § (9)
153.302 -----	9.301, §§ (2), (3)	154.051 -----	7.08, § (9)
153.303 -----	9.302	154.052 -----	7.08, § (2)
	9.306	154.053 -----	7.08, §§ (1), (2),
153.304 -----	9.303		(4)
153.305 -----	9.304	154.054 -----	7.08, §§ (3) to (5)
153.306 -----	9.305	154.055	
153.307 -----	9.307	to	
153.308 -----	9.309	154.057 -----	7.08, § (7)
153.309 -----	9.310	154.058 -----	7.08, § (3)
153.310 -----	9.311	154.059 -----	7.08, § (3)
153.311 -----	9.312	154.060 -----	7.08, § (6)
153.401 -----	9.012	154.101 -----	7.09, §§ (1), (2),
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# TAX CODE

**PROPERTY TAX CODE**

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*Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted this Title. Section 6(b) of said Act provided:*

*"All other general, local and special laws in conflict with this Act are repealed to the extent of the conflict, and the failure expressly to repeal or amend any law in conflict with this Act is not evidence of a legislative intent that the law not be repealed."*

*Section 3 of the 1979 Act was the effective date provision. Subsection (h) thereof provided:*

*"To the extent necessary to apply provisions of the Property Tax Code that take effect before January 1, 1982, Chapter 1 takes effect on January 1, 1980."*

**§ 1.01. Short Title**

This title may be cited as the Property Tax Code.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 1.02. Applicability of Title**

This title applies to a taxing unit that is created by or pursuant to any general, special, or local law enacted before or after the enactment of this title unless a law enacted after enactment of this title by or pursuant to which the taxing unit is created expressly provides that this title does not apply. This title supersedes any provision of a municipal charter or ordinance relating to property taxation. Nothing in this title invalidates or restricts the right of voters to utilize municipal-level initiative and referendum to set a tax rate, level of spending, or limitation on tax increase for that municipality.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 117, ch. 13, § 1, eff. Jan 1, 1982.]

Section 168 (b) of the 1981 amendatory act provides:

*"An amendment by this Act of a provision that is not yet in effect on the effective date of this Act does not take effect until the provision amended takes effect."*

**§ 1.03. Construction of Title**

The Code Construction Act<sup>1</sup> applies to the construction of each provision of this title except as otherwise expressly provided by this title.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 5429b-2.

**§ 1.04. Definitions**

In this title:

(1) "Property" means any matter or thing capable of private ownership.

(2) "Real property" means:

- (A) land;
- (B) an improvement;
- (C) a mine or quarry;
- (D) a mineral in place;
- (E) standing timber; or

(F) an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated in Paragraphs (A) through (E) of this subdivision.

(3) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land; or

(B) a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily.

(4) "Personal property" means property that is not real property.

(5) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.

(6) "Intangible personal property" means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill.

(7) "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

(A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

(C) both the seller and purchaser seek to maximize their gains and neither is in a position

to take advantage of the exigencies of the other.

(8) "Appraised value" means the value determined as provided by Chapter 23 of this code.

(9) "Assessed value" means the amount determined by multiplying the appraised value by the applicable assessment ratio.

(10) "Taxable value" means the amount determined by deducting from assessed value the amount of any applicable partial exemption.

(11) "Partial exemption" means an exemption of part of the value of taxable property.

(12) "Taxing unit" means a county, an incorporated city or town (including a home-rule city), a school district, a special district or authority (including a junior college district, a hospital district, a district created by or pursuant to the Water Code, a mosquito control district, a fire prevention district, or a noxious weed control district), or any other political unit of this state, whether created by or pursuant to the constitution or a local, special, or general law, that is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs.

(13) "Tax year" means the calendar year.

(14) "Assessor" means the officer or employee responsible for assessing property taxes as provided by Chapter 26 of this code for a taxing unit by whatever title he is designated.

(15) "Collector" means the officer or employee responsible for collecting property taxes for a taxing unit by whatever title he is designated.

(16) "Possessory interest" means an interest that exists as a result of possession or exclusive use or a right to possession or exclusive use of a property and that is unaccompanied by ownership of a fee simple or life estate in the property. However, "possessory interest" does not include an interest, whether of limited or indeterminate duration, that involves a right to exhaust a portion of a real property.

[Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 118, ch. 13, § 2, eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (k) thereof provided:

"For purposes of applying the parts of the Property Tax Code that take effect before January 1, 1982, 'appraisal office,' 'appraisal district,' and 'chief appraiser' means the office or officer, as applicable, that appraises property for the tax purposes of a taxing unit."

#### § 1.05. City Fiscal Year

The governing body of a home-rule city may establish by ordinance a fiscal year different from that fixed in its charter if a different fiscal year is desirable to adapt budgeting and other fiscal activities to the tax cycle required by this title.

[Acts 1979, 66th Leg., p. 2220, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 1.06. Effect of Weekend or Holiday

If the last day for the performance of an act is a Saturday, Sunday, or legal state or national holiday, the act is timely if performed on the next regular business day.

[Acts 1979, 66th Leg., p. 2220, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 1.07. Delivery of Notice

(a) An official or agency required by this title to deliver a notice to a property owner may deliver the notice by regular first-class mail, with postage prepaid, unless this title requires a different method of delivery.

(b) The official or agency shall address the notice to the property owner or, if appropriate, his agent at his address according to the most recent record in the possession of the official or agency. However, if a property owner files a written request that notices be sent to a particular address, the official or agency shall send the notice to the address stated in the request.

(c) A notice permitted to be delivered by first-class mail by this section is presumed delivered when it is deposited in the mail. This presumption is rebuttable when evidence of failure to receive notice is provided.

[Acts 1979, 66th Leg., p. 2220, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4947, ch. 885, § 1, eff. Jan. 1, 1984.]

#### § 1.08. Timeliness of Action by Mail

When a property owner is required by this title to make a payment or to file or deliver a report, application, statement, or other document or paper before a specified date, his action is timely if:

(1) it is sent by regular first-class mail, properly addressed with postage prepaid; and

(2) it bears a post office cancellation mark of a date earlier than the specified date and within the specified period or the property owner furnishes satisfactory proof that it was deposited in the mail before the specified date and within the specified period.

[Acts 1979, 66th Leg., p. 2220, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 1.09. Availability of Forms

When a property owner is required by this title to use a form, the office or agency with which the form is filed shall make printed forms readily and timely available and shall furnish a property owner a form without charge.

[Acts 1979, 66th Leg., p. 2220, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 1.10. Rolls in Electronic Data-Processing Records

The appraisal roll for an appraisal district and the appraisal roll or the tax roll for the unit may be

retained in electronic data-processing equipment. However, a physical document for each must be prepared and made readily available to the public. [Acts 1979, 66th Leg., p. 2220, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 118, ch. 13, § 3, eff. Jan 1, 1982.]

**§ 1.11. Communications to Fiduciary**

(a) On the written request of a property owner, an appraisal office or an assessor or collector shall deliver all notices, tax bills, and other communications relating to the owner's property or taxes to the owner's fiduciary.

(b) A request pursuant to this section remains in effect until revoked by the owner.

[Acts 1981; 67th Leg., 1st C.S., p. 118, ch. 13, § 4, eff. Jan. 1, 1982.]

**§ 1.12. Weighted Average Level of Appraisal**

For purposes of this title, "weighted average level of appraisal" is determined by dividing the total appraised value, as determined by the appraisal office or the appraisal review board, of a reasonable and representative sample of properties in the appraisal district by the sum of the following with respect to those properties:

(1) the total value determined according to law of properties that qualify for appraisal for tax purposes according to a standard other than market value; and

(2) the total market value of all other properties.

[Acts 1981, 67th Leg., 1st C.S., p. 118, ch. 13, § 5, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4924, ch. 877, § 1, eff. Jan. 1, 1984.]

**§ 1.13. Masters for Tax Suits**

*Text of section as added by Acts 1983, 68th Leg., p. 5058, ch. 916, § 1*

(a) The court may, in delinquent tax suits, for good cause appoint a master in chancery for each case as desired, who shall be a citizen of this state and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as the master of chancery has in a court of equity.

(b) The order of reference to the master may specify or limit his powers, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the limitations and specifications stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production

before him of evidence upon all matters embraced in the reference, including the production of books, papers, vouchers, documents, and other writings applicable thereto. He may rule upon the admissibility of evidence, unless otherwise directed by the order of reference, and has the authority to put witnesses on oath, and may, himself, examine them, and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner as provided for a court sitting in the trial of a case.

(c) The clerk of the court shall forthwith furnish the master with a copy of the order of reference.

(d) The parties may procure the attendance of witnesses before the master by the issuance and service of process as provided by law.

(e) The court may confirm, modify, correct, reject, reverse, or recommit the report, after it is filed, as the court may deem proper and necessary in the particular circumstances of the case. The court shall award reasonable compensation to such master to be taxed as costs of suit.

[Acts 1983, 68th Leg., p. 5058, ch. 916, § 1, eff. Sept. 1, 1983.]

*For text as added by Acts 1983, 68th Leg., p. 5463, ch. 1028, § 1, see § 1.13, post*

**§ 1.13. Appraisers for Taxing Units Prohibited**

*Text of section as added by Acts 1983, 68th Leg., p. 5463, ch. 1028, § 1, effective October 1, 1985*

A taxing unit may not employ any person for the purpose of appraising property for taxation purposes except to the extent necessary to perform a contract under Section 6.05(b) of this code.

[Acts 1983, 68th Leg., p. 5463, ch. 1028, § 1, eff. Oct. 1, 1985.]

*For text as added by Acts 1983, 68th Leg., p. 5058, ch. 916, § 1, see § 1.13, ante*

**SUBTITLE B. PROPERTY TAX ADMINISTRATION**

**CHAPTER 5. STATE ADMINISTRATION**

- Sec. 5.01. State Property Tax Board.
- 5.02. Board Personnel.
- 5.03. Powers and Duties Generally.
- 5.04. Training and Education of Appraisers.
- 5.05. Appraisal Manuals and Other Materials.
- 5.06. Explanation of Taxpayer Remedies.
- 5.07. Property Tax Forms and Records Systems.
- 5.08. Professional and Technical Assistance.
- 5.09. Annual Report.
- 5.10. Ratio Studies.

**§ 5.01. State Property Tax Board**

(a) The State Property Tax Board is established. The board consists of six members appointed by the governor with the advice and consent of the senate.

In making the appointments, the governor, to the extent practicable, shall select persons so that each geographical area of the state is represented. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(b) Members of the board hold office for terms of six years, with the terms of two members expiring on March 1 of each odd-numbered year.

(c) To be eligible to serve on the board, a person must have been a resident of this state for at least 10 years.

(d) After March 1, 1983, at least two members must be certified by the Board of Tax Assessor Examiners.

(e) A majority of the board constitutes a quorum.

(f) The governor shall designate one of the members of the board to serve as chairman for a term, in that capacity, of two years expiring on March 1 of each odd-numbered year.

(g) The board shall maintain a principal office in Austin.

(h) The board shall meet at least once in each calendar quarter and may meet at other times at the call of the chairman or as provided by the rules of the board.

(i) A member of the board may not receive compensation for his service on the board but is entitled to reimbursement for actual and necessary expenses, as provided by legislative appropriation, incurred while on travel status in the performance of official duties.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 8(a) of said Act provided:

"The name of the School Tax Assessment Practices Board is changed to the State Property Tax Board, and its members serve as members of the State Property Tax Board for the terms to which each was appointed to serve on the School Tax Assessment Practices Board. A reference to the School Tax Assessment Practices Board by a statute means the State Property Tax Board. All books, records, property, and personnel of the School Tax Assessment Practices Board are transferred to the State Property Tax Board."

#### § 5.02. Board Personnel

(a) The board shall employ an executive director who shall administer board operations as directed by the board.

(b) The director may employ professional, clerical, and other personnel to assist him in the performance of his duties.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 5.03. Powers and Duties Generally

(a) The board shall adopt rules establishing minimum standards for the administration and operation of an appraisal district. The minimum standards may vary according to the number of parcels and

the kinds of property the district is responsible for appraising.

(b) The board may require from each district engaged in appraising property for taxation an annual report on a form prescribed by the board on the administration and operation of the appraisal office.

(c) The board may contract with consultants to assist in performance of the duties imposed by this chapter.

[Acts 1979, 66th Leg., p. 2221, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 118, ch. 13, § 6, eff. Aug. 14, 1981.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code. Section 7(a) and (b) of said Act provided:

"(a) Every power or duty relating to the administration of ad valorem taxation that is conferred on the comptroller of public accounts by a law that is repealed by this Act is transferred to the State Property Tax Board. The powers and duties relating to administration of ad valorem taxation that are conferred on the comptroller of public accounts by Article 7260, Revised Civil Statutes of Texas, 1925, as amended, are transferred to the State Property Tax Board.

"(b) On January 1, 1980, all books and records, property, and personnel in the office of the comptroller of public accounts that are involved or used in administration of ad valorem taxation are transferred to the State Property Tax Board. The state auditor shall resolve any dispute over what property, books, or records are subject to this section, and the auditor's decision is final."

#### § 5.04. Training and Education of Appraisers

(a) The board shall conduct, sponsor, or approve courses of instruction and inservice and intern training programs on the technical, legal, and administrative aspects of property taxation.

(b) The board shall cooperate in developing curricula with other public agencies, with educational institutions, and with private organizations interested in training and educating appraisers, and the board may cooperate with them in conducting or sponsoring courses of instruction and training programs.

(c) An appraisal district shall reimburse an employee of the appraisal office for all actual and necessary expenses, tuition and other fees, and costs of materials incurred in attending, with approval of the chief appraiser, a course or training program conducted, sponsored, or approved by the board.

[Acts 1979, 66th Leg., p. 2222, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 119, ch. 13, § 7, eff. Aug. 14, 1981.]

#### § 5.05. Appraisal Manuals and Other Materials

(a) The board shall prepare and issue:

- (1) a general appraisal manual;
- (2) special appraisal manuals;
- (3) cost, price, and depreciation schedules, with provision for inserting local market index factors and with a standard procedure for determining local market index factors;
- (4) news and reference bulletins;
- (5) annotated digests of all laws relating to property taxation; and

(6) a handbook of all rules promulgated by the board relating to the property tax and its administration.

(b) The board shall revise or supplement all materials periodically as necessary to keep them current.

(c) The board shall provide without charge all materials to officials of local government who are responsible for administering the property tax system. It shall make the materials available to members of the public but may charge a reasonable fee to offset the costs of printing and distributing the materials.

(d) If the appraised value of property is at issue in a lawsuit involving property taxation, a court may not admit in evidence appraisal manuals or cost, price, and depreciation schedules, or portions thereof, that are prepared and issued pursuant to this section. The manuals or schedules may only be used for the limited purpose of impeachment in the same manner and pursuant to the same evidentiary rules as applicable to books and treatises.

[Acts 1979, 66th Leg., p. 2222, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 119, ch. 13, § 8, eff. Aug. 14, 1981.]

**§ 5.06. Explanation of Taxpayer Remedies**

The board shall prepare and publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. It shall include in the pamphlet advice on preparing and presenting a protest.

[Acts 1979, 66th Leg., p. 2222, ch. 841, § 1, eff. Jan. 1, 1980.]

**§ 5.07. Property Tax Forms and Records Systems**

(a) The board shall prescribe the contents of all forms necessary for the administration of the property tax system and on request shall furnish sufficient copies of model forms of each type to the appropriate local officials. The board may require reimbursement for the costs of printing and distributing the forms.

(b) The board shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The board shall also prescribe a uniform record system to be used by all offices appraising property for tax purposes.

[Acts 1979, 66th Leg., p. 2222, ch. 841, § 1, eff. Jan. 1, 1980.]

**§ 5.08. Professional and Technical Assistance**

(a) The board may provide professional and technical assistance on request in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The board may also provide professional and technical assistance on

request to an appraisal review board. The board may require reimbursement for the costs of providing the assistance.

(b) The board may provide information to and consult with persons actively engaged in appraising property for tax purposes about any matter relating to property taxation without charge.

[Acts 1979, 66th Leg., p. 2223, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 119, ch. 13, § 9, eff. Aug. 14, 1981.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (b) thereof provided:

"Chapter 5 takes effect January 1, 1980. The board shall provide advice and assistance as provided by Section 5.08 to local officials on the implementation of the Property Tax Code."

**§ 5.09. Annual Report**

(a) The board shall publish an annual report of its operations under this code and of the operations of the appraisal districts. The report shall include for each appraisal district, each county, and each school district and may include for other taxing units the total appraised values, assessed values, and taxable values of taxable property by class of property, the assessment ratio, and the tax rate.

(b) The board shall deliver a copy of each annual report to the governor, the lieutenant governor, and each member of the legislature.

[Acts 1979, 66th Leg., p. 2223, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 119, ch. 13, § 10, eff. Aug. 14, 1981.]

**§ 5.10. Ratio Studies**

(a) The board shall conduct a biennial study in each appraisal district to determine for each odd-numbered year the degree of uniformity of and the weighted average level of appraisals by the appraisal district within each major kind of property. The board shall publish the findings of the study before the end of the even-numbered year following the year for which the study is conducted. In conducting the study, the board shall use appropriate standard statistical analysis techniques to compute measures of central tendency and average dispersion.

(b) The published findings of a ratio study conducted by the State Property Tax Board shall be distributed to all members of the legislature and to all appraisal districts.

[Acts 1981, 67th Leg., 1st C.S., p. 119, ch. 13, § 11, eff. Jan. 1, 1984. Amended by Acts 1983, 68th Leg., p. 5404, ch. 1001, § 2, eff. Jan. 1, 1984.]

**CHAPTER 6. LOCAL ADMINISTRATION**

**SUBCHAPTER A. APPRAISAL DISTRICTS**

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#### SUBCHAPTER A. APPRAISAL DISTRICTS

##### § 6.01. Appraisal Districts Established

(a) An appraisal district is established in each county.

(b) The district is responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.

(c) An appraisal district is a political subdivision of the state.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 119, ch. 13, §§ 12, 13, eff. Aug. 14, 1981; Acts 1983, 68th Leg., p. 4819, ch. 851, § 1, eff. Aug. 29, 1983.]

##### § 6.02. District Boundaries

(a) Except as otherwise provided by this section, the appraisal district's boundaries are the same as the county's boundaries.

(b) A taxing unit that has boundaries extending into two or more counties may choose to participate in only one of the appraisal districts. In that event, the boundaries of the district chosen extend outside the county to the extent of the unit's boundaries. To be effective, the choice must be approved by resolution of the board of directors of the district chosen.

(c) A taxing unit that has chosen to participate in a single appraisal district under Subsection (b) of this section may revoke that choice and, if permitted to do so by Subsection (b), choose to participate in a single appraisal district other than the one previously chosen. A taxing unit that has withdrawn from

an appraisal district under this subsection and chosen to participate in another single appraisal district may not under this subsection withdraw from that district.

(d) A taxing unit that makes a choice under this section must do so by an official action of its governing body in the manner required by law for official action by the body. A choice made by a taxing unit under this section takes effect beginning on the next January 1 that is at least 90 days from the date on which the choice is made.

(e) If a taxing unit ceases to have territory in the county for which the appraisal district in which the unit participates is established, but still has territory in two or more counties, the unit may choose to participate in only one district in the manner prescribed by this section.

(f) All costs of operating an appraisal district in territory outside the county for which the appraisal district is established are allocated to the taxing unit that chooses to add that territory to the district. If two or more taxing units add the same territory to an appraisal district, costs of operating the district in that territory are allocated to the units in the proportion the total dollar amount of taxes each unit imposes in that territory bears to the total dollar amount of taxes all taxing units participating in the appraisal district impose in that territory.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 120, ch. 13, §§ 14, 167(a), eff. Aug. 14, 1981; Acts 1983, 68th Leg., p. 573, ch. 117, § 1, eff. May 17, 1983.]

Sections 157 and 158 of the 1981 amendatory act provide:

"Sec. 157. Change of Appraisal Districts. (a) A taxing unit that has territory in more than one county and has chosen to participate in only one appraisal district may change to another appraisal district before October 1, 1981, subject to the provisions of this section. A choice to change appraisal districts that was made before this Act takes effect is valid after this Act takes effect if it conformed to this section.

"(b) If a taxing unit changes to another appraisal district, the unit may not receive a refund of money paid to the district it leaves and shall pay to the district it joins, in addition to the costs of adding its additional territory to the district, its proportionate share of the costs previously incurred by the district (excluding personnel costs) in preparation for operation under the Property Tax Code and its share of operating the district for the remainder of 1981.

"(c) The unit's proportionate share of previously incurred costs is calculated as if it had joined the district before 1981. The board of directors of the district shall provide for a refund to each unit that previously paid money to the district of that unit's proportionate share of the money recovered from the newly joining unit for previously incurred costs.

"(d) The requirement by Section 6.02(b), Property Tax Code, as amended by this Act, that an appraisal district board of directors consent to the choice by a taxing unit to have all its territory included in that appraisal district applies only to a choice first made in 1981. A choice made before 1981 continues in effect and does not require consent of the appraisal district board of directors.

"Sec. 158. Costs for County Joining Appraisal District. (a) When a county that has not previously participated in the appraisal district begins participation as required by this Act, it shall pay to the district its proportionate share of the costs previously incurred by the district (excluding personnel costs) in preparation for opera-



tion under the Property Tax Code and its share of operating the district for the remainder of 1981.

"(b) The county's proportionate share of previously incurred costs is calculated as if it had joined the district before 1981. The board of directors of the district shall provide for a refund to each unit that previously paid money to the district of that unit's proportionate share of the money received from the county for previously incurred costs."

Section 2 of the 1983 amendatory act provides:

"The amendment by this Act of Section 6.02, Tax Code, does not affect the validity of a choice made by a taxing unit before the effective date of this Act to participate in a single appraisal district."

### § 6.03. Board of Directors

(a) The appraisal district is governed by a board of five directors. To be eligible to serve on the board of directors, an individual must be a resident of the district and must have resided in the district for at least two years immediately preceding the date he takes the office. An individual who is otherwise eligible to serve on the board is not ineligible because of membership on the governing body of a taxing unit. However, not more than one employee of a taxing unit may serve on the board at one time. If more than one employee is appointed to the board, the employee receiving the highest vote total serves, and the taxing unit that nominated each of the other employees appointed to the board shall name a replacement who is not an employee of a taxing unit.

(b) Members of the board of directors serve two-year terms beginning on January 1 of even-numbered years.

(c) Members of the board of directors are appointed by vote of the governing bodies of the incorporated cities and towns and the school districts that participate in the district and of the county. A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships.

(d) The voting entitlement of a taxing unit that is entitled to vote for directors is determined by dividing the total dollar amount of property taxes imposed in the district by the taxing unit for the preceding tax year by the sum of the total dollar amount of property taxes imposed in the district for that year by each taxing unit that is entitled to vote, by multiplying the quotient by 1,000, and by rounding the product to the nearest whole number. That number is multiplied by the number of directorships to be filled. A taxing unit participating in two or more districts is entitled to vote in each district in which it participates, but only the taxes imposed in a district are used to calculate voting entitlement in that district.

(e) The county clerk shall calculate the number of votes to which each taxing unit is entitled and shall deliver written notice to the presiding officer of the governing body of each unit of its voting entitlement before October 1 of each odd-numbered year.

(f) Each taxing unit that is entitled to vote may nominate by resolution adopted by its governing

body one candidate for each position to be filled on the board of directors. The presiding officer of the governing body of the unit shall submit the names of the unit's nominees to the county clerk before October 15. Before October 30, the county clerk shall prepare a ballot, listing the candidates alphabetically according to the first letter in each candidate's surname, and shall deliver a copy of the ballot to the presiding officer of the governing body of each taxing unit that is entitled to vote.

(g) The governing body of each taxing unit entitled to vote shall determine its vote by resolution and submit it to the county clerk before November 15. The county clerk shall count the votes, declare the five candidates who receive the largest cumulative vote totals elected, and submit the results before December 1 to the governing body of each taxing unit in the district and to the candidates. The county clerk shall resolve a tie vote by any method of chance.

(h) If a vacancy occurs on the board of directors, each taxing unit that is entitled to vote by this section may nominate by resolution adopted by its governing body a candidate to fill the vacancy. The unit shall submit the name of its nominee to the county clerk within 10 days after notification from the board of directors of the existence of the vacancy, and the county clerk shall prepare and deliver to the board of directors within the next five days a list of the nominees. The board of directors shall elect by majority vote of its members one of the nominees to fill the vacancy.

(i) Repealed by Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 167(a), eff. Aug. 14, 1981.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 120, ch. 13, §§ 15, 167(a), eff. Aug. 14, 1981.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (c) thereof provided, in part:

"(1) Except as otherwise provided by this subsection, Subchapter A of Chapter 6 takes effect January 1, 1980.

"(2) For the purpose of appointing the first members of the appraisal district board of directors, Section 6.03 takes effect September 1, 1979."

Section 156(a) of the 1981 amendatory act provides:

"A change in the membership of an appraisal district board of directors or in the method of selection that was made under Section 6.03(i), Property Tax Code, prior to the effective date of this Act expires December 31, 1981, and does not apply to appointment of members for terms beginning January 1, 1982, unless the change conforms to and is proposed anew as provided by Section 6.031, Property Tax Code, as added by this Act. A change proposed after August 15, 1981, but before this Act takes effect, is valid and applies to appointments to terms beginning in 1982 if it conforms to Section 6.031, Property Tax Code, as added by this Act.

### § 6.031. Changes in Board Membership or Selection

(a) The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the district before August 15, may increase the number of members on the board

of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, unless the governing body of a taxing unit that is entitled to vote on the appointment of board members adopts a resolution opposing the change, and files it with the board of directors before September 1. If a change is rejected, the board shall notify, in writing, each taxing unit participating in the district before September 15.

(b) The taxing units participating in an appraisal district may increase the number of members on the board of directors of the district to not more than 13, change the method or procedure for appointing the members, or both, if the governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the change. However, a change under this subsection is not valid if it reduces the voting entitlement of one or more taxing units that do not adopt a resolution proposing it to less than a majority of the voting entitlement under Section 6.03 of this code or if it reduces the voting entitlement of any taxing unit that does not adopt a resolution proposing it to less than 50 percent of its voting entitlement under Section 6.03 of this code and if that taxing unit's allocation of the budget is not reduced to the same proportional percentage amount, or if it expands the types of taxing units that are entitled to vote on appointment of board members.

(c) An official copy of a resolution under this section must be filed with the county clerk of the county the appraisal district primarily serves after June 30 and before October 1 of a year in which board members are appointed or the resolution is ineffective.

(d) Before October 5 of each year in which board members are appointed, the county clerk shall determine whether a sufficient number of eligible taxing units have filed valid resolutions proposing a change for the change to take effect. The clerk shall notify each taxing unit participating in the district of each change that is adopted before October 10.

(e) A change in membership or selection made as provided by this section remains in effect until changed in a manner provided by this section or rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code.

(f) A provision of Section 6.03 of this code that is subject to change under this section but is not expressly changed by resolution of a sufficient number of eligible taxing units remains in effect.

[Acts 1981, 67th Leg., 1st C.S., p. 121, ch. 13, § 16, eff. Aug. 14, 1981.]

Section 156(a) of the 1981 Act provides:

"A change in the membership of an appraisal district board of directors or in the method of selection that was made under Section 6.03(i), Property Tax Code, prior to the effective date of this Act expires December 31, 1981, and does not apply to appoint-

ment of members for terms beginning January 1, 1982, unless the change conforms to and is proposed anew as provided by Section 6.031, Property Tax Code, as added by this Act. A change proposed after August 15, 1981, but before this Act takes effect, is valid and applies to appointments to terms beginning in 1982 if it conforms to Section 6.031, Property Tax Code, as added by this Act."

#### § 6.04. Organization, Meetings, and Compensation

(a) A majority of the appraisal district board of directors constitutes a quorum. At its first meeting each calendar year, the board shall elect from its members a chairman and a secretary.

(b) The board may meet at any time at the call of the chairman or as provided by board rule.

(c) Members of the board may not receive compensation for service on the board but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as provided by the budget adopted by the board.

[Acts 1979, 66th Leg., p. 2225, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, 68th Leg., p. 1160, ch. 262, § 1, eff. Aug. 29, 1983.]

#### § 6.05. Appraisal Office

(a) Except as authorized by Subsection (b) of this section, each appraisal district shall establish an appraisal office.

(b) The board of directors of an appraisal district may contract with an appraisal office in another district or with a taxing unit in the district to perform the duties of the appraisal office for the district.

(c) The chief appraiser is the chief administrator of the appraisal office. The chief appraiser is appointed by and serves at the pleasure of the appraisal district board of directors. If a taxing unit performs the duties of the appraisal office pursuant to a contract, the assessor for the unit is the chief appraiser.

(d) The chief appraiser is entitled to compensation as provided by the budget adopted by the board of directors. He may employ and compensate professional, clerical, and other personnel as provided by the budget.

(e) The chief appraiser may delegate authority to his employees.

[Acts 1979, 66th Leg., p. 2224, ch. 841, § 1, eff. Jan. 1, 1980.]

Section 1 of Acts 1979, 66th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subsection (k) thereof provided:

"For purposes of applying the parts of the Property Tax Code that take effect before January 1, 1982, 'appraisal office,' 'appraisal district,' and 'chief appraiser' mean the office or officer, as applicable, that appraises property for the tax purposes of a taxing unit."

Acts 1981, 67th Leg., 1st C.S., p. 181, ch. 13, § 164, as amended by Acts 1983, 68th Leg., p. 5463, ch. 1028, § 2, provides:

"Effective October 1, 1984, a taxing unit in an appraisal district that did not postpone appraising property pursuant to Section 161, Chapter 13, Acts of the 67th Legislature, 1st Called Session, 1981,

may not employ any person for the purpose of appraising property for taxation purposes except to the extent necessary to perform a contract under Section 6.05(b), Property Tax Code. This section expires October 1, 1985."

#### § 6.06. Appraisal District Budget and Financing

(a) Each year the chief appraiser shall prepare a proposed budget for the operations of the district for the following tax year and shall submit copies to each taxing unit participating in the district and to the district board of directors before June 15. He shall include in the budget a list showing each proposed position, the proposed salary for the position, all benefits proposed for the position, each proposed capital expenditure, and an estimate of the amount of the budget that will be allocated to each taxing unit.

(b) The board of directors shall hold a public hearing to consider the budget. The secretary of the board shall deliver to the presiding officer of the governing body of each taxing unit participating in the district not later than the 10th day before the date of the hearing a written notice of the date, time, and place fixed for the hearing. The board shall complete its hearings, make any amendments to the proposed budget it desires, and finally approve a budget before September 15. If governing bodies of a majority of the taxing units entitled to vote on the appointment of board members adopt resolutions disapproving a budget and file them with the secretary of the board within 30 days after its adoption, the budget does not take effect, and the board shall adopt a new budget within 30 days of the disapproval.

(c) The board may amend the approved budget at any time, but the secretary of the board must deliver a written copy of a proposed amendment to the presiding officer of the governing body of each taxing unit participating in the district not later than the 30th day before the date the board acts on it.

(d) Each taxing unit participating in the district is allocated a portion of the amount of the budget equal to the proportion that the total dollar amount of property taxes imposed in the district by the unit for the tax year in which the budget proposal is prepared bears to the sum of the total dollar amount of property taxes imposed in the district by each participating unit for that year. If a taxing unit participates in two or more districts, only the taxes imposed in a district are used to calculate the unit's cost allocations in that district. If the number of real property parcels in a taxing unit is less than 5 percent of the total number of real property parcels in the district and the taxing unit imposes in excess of 25 percent of the total amount of the property taxes imposed in the district by all of the participating taxing units for a year, the unit's allocation may not exceed a percentage of the appraisal district's budget equal to three times the unit's percentage of the total number of real property parcels appraised by the district.

(e) Unless the governing body of a unit and the chief appraiser agree to a different method of payment, each taxing unit shall pay its allocation in four equal payments to be made at the end of each calendar quarter, and the first payment shall be made before January 1 of the year in which the budget takes effect. A payment is delinquent if not paid on the date it is due. A delinquent payment incurs a penalty of 5 percent of the amount of the payment and accrues interest at an annual rate of 10 percent. If the budget is amended, any change in the amount of a unit's allocation is apportioned among the payments remaining.

(f) Payments shall be made to a depository designated by the district board of directors. The district's funds may be disbursed only by a written check, draft, or order signed by the chairman and secretary of the board or, if authorized by resolution of the board, by the chief appraiser.

(g) If a taxing unit decides not to impose taxes for any tax year, the unit is not liable for any of the costs of operating the district in that year, and those costs are allocated among the other taxing units as if that unit had not imposed taxes in the year used to calculate allocations. However, if that unit has made any payments, it is not entitled to a refund.

(h) If a newly formed taxing unit or a taxing unit that did not impose taxes in the preceding year imposes taxes in any tax year, that unit is allocated a portion of the amount budgeted to operate the district as if it had imposed taxes in the preceding year, except that the amount of taxes the unit imposes in the current year is used to calculate its allocation. Before the amount of taxes to be imposed for the current year is known, the allocation may be based on an estimate to which the district board of directors and the governing body of the unit agree, and the payments made after that amount is known shall be adjusted to reflect the amount imposed. The payments of a newly formed taxing unit that has no source of funds are postponed until the unit has received adequate tax or other revenues.

[Acts 1979, 66th Leg., p. 2226, ch. 841, § 1, eff. Jan. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 122, ch. 13, §§ 17, 18, eff. Aug. 14, 1981.]

Section 1 of Acts 1981, 67th Leg., p. 2217, ch. 841, enacted Title 1 of the Tax Code, the Property Tax Code. Section 3 of said Act was the effective date provision. Subdivisions (c)(3) to (c)(6) thereof provided:

"(3) Section 6.06 takes effect January 1, 1981. However, for the purpose of preparing and adopting a budget for 1981, Subsections (a) through (c) of Section 6.06 take effect September 1, 1980. The board shall perform the chief appraiser's functions as provided by Section 6.06 before the district employs a chief appraiser.

"(4) Between January 1, 1980, and January 1, 1982, the appraisal district board of directors shall prepare for the district's operations pursuant to the Property Tax Code. The board of directors shall establish, equip, and staff the appraisal office before January 1, 1982. In 1980, the board of directors shall operate with funds distributed by the State Property Tax Board and in 1981 shall operate with the state funds and with the money paid to the district pursuant to Section 6.06, Property Tax Code.

"(5) Before January 1, 1982, the appraisal district may contract as provided by the Interlocal Cooperation Act [Civil Statutes, art. 4413(32c)] to perform appraisal services for any taxing unit within the district. A contract authorized by this subsection must provide that each contracting taxing unit pay the actual costs of the appraisal services performed for it and that a board of equalization appointed by the district's board of directors serve as board of equalization for the unit.

"(6) For the purposes of a contract authorized by this subsection, the appraisal district board of directors shall appoint three residents of the district to serve as a board of equalization each year the district appraises property pursuant to a contract authorized by this subsection. The board of directors shall designate one of its appointees to serve as chairman of the board of equalization. Members of the board of equalization are entitled to per diem set by the board of directors for each day the board meets. Before the board of equalization begins to perform its duties, each member shall take an oath in substantially the form required by Article 7215, Revised Civil Statutes of Texas, 1925. The appraisal district board of equalization has the powers and shall perform the duties of the county board of equalization as provided by Title 122, Revised Civil Statutes of Texas, 1925, as amended."

Section 156(b) and (c) of the 1981 amendatory act provides:

"(b) A change in the allocation among taxing units of the costs of operating an appraisal district that was made under Section 6.06(d), Property Tax Code, prior to the effective date of this Act expires December 31, 1981, and does not apply to allocation of cost for 1982 unless the change conforms to and is proposed anew as provided by Section 6.061 Property Tax Code, as added by this Act.

"(c) The deadlines provided by Sections 6.06 and 6.061, Property Tax Code, as amended by this Act, do not apply in 1981. In 1981, a change in the allocation of costs of operating an appraisal district must be made by resolutions filed with the county clerk before October 1 or within 10 days after this Act takes effect, whichever is later; the county clerk must certify the change, if any, before October 10 or within 20 days after this Act takes effect, whichever is later; the chief appraiser shall submit the district's budget before October 1; and the budget must be adopted before December 1."

#### § 6.061. Changes in Method of Financing

(a) The board of directors of an appraisal district, by resolution adopted and delivered to each taxing unit participating in the district after June 15 and before August 15, may prescribe a different method of allocating the costs of operating the district unless the governing body of any taxing unit that participates in the district adopts a resolution opposing the different method, and files it with the board of directors before September 1. If a board proposal is rejected, the board shall notify, in writing, each taxing unit participating in the district before September 15.

(b) The taxing units participating in an appraisal district may adopt a different method of allocating the costs of operating the district if the governing bodies of three-fourths of the taxing units that are entitled to vote on the appointment of board members adopt resolutions providing for the other method. However, a change under this subsection is not valid if it requires any taxing unit to pay a greater proportion of the appraisal district's costs than the unit would pay under Section 6.06 of this code without the consent of the governing body of that unit.

(c) An official copy of a resolution under this section must be filed with the county clerk of the county the appraisal district primarily serves after

April 30 and before May 15 or the resolution is ineffective.

(d) Before May 20, the county clerk shall determine whether a sufficient number of eligible taxing units have filed valid resolutions proposing a change in the allocation of district costs for the change to take effect. Before May 25, the clerk shall notify each taxing unit participating in the district of each change that is adopted.

(e) A change in allocation of district costs made as provided by this section remains in effect until changed in a manner provided by this section or rescinded by resolution of a majority of the governing bodies that are entitled to vote on appointment of board members under Section 6.03 of this code.

[Acts 1981, 67th Leg., 1st C.S., p. 123, ch. 13, § 19, eff. Aug. 14, 1981.]

Section 156(b) and (c) of the 1981 Act provides:

"(b) A change in the allocation among taxing units of the costs of operating an appraisal district that was made under Section 6.06(d), Property Tax Code, prior to the effective date of this Act expires December 31, 1981, and does not apply to allocation of cost for 1982 unless the change conforms to and is proposed anew as provided by Section 6.061, Property Tax Code, as added by this Act.

"(c) The deadlines provided by Sections 6.06 and 6.061, Property Tax Code, as amended by this Act, do not apply in 1981. In 1981, a change in the allocation of costs of operating an appraisal district must be made by resolutions filed with the county clerk before October 1 or within 10 days after this Act takes effect, whichever is later; the county clerk must certify the change, if any, before October 10 or within 20 days after this Act takes effect, whichever is later; the chief appraiser shall submit the district's budget before October 1; and the budget must be adopted before December 1."

#### § 6.07. Taxing Unit Boundaries

If a new taxing unit is formed or an existing taxing unit's boundaries are altered, the unit shall notify the appraisal office of the new boundaries within 30 days after the date the unit is formed or its boundaries are altered.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 6.08. Notice of Optional Exemptions

If a taxing unit adopts, amends, or repeals an exemption that the unit by law has the option to adopt or not, the taxing unit shall notify the appraisal office of its action and of the terms of the exemption within 30 days after the date of its action.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 6.09. Designation of District Depository

(a) The appraisal district depository must be a banking corporation incorporated under the laws of this state or the United States or a savings and loan association in this state whose deposits are insured by the Federal Savings and Loan Insurance Corporation.

(b) The appraisal district board of directors shall designate as the district depository the financial

institution or institutions that offer the most favorable terms and conditions for the handling of the district's funds.

(e) The board shall solicit bids to be designated as depository for the district at least once in each two-year period.

(d) To the extent that funds in the depository are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties.

[Acts 1981, 67th Leg., 1st C.S., p. 124, ch. 13, § 20, eff. Aug. 14, 1981.]

**§ 6.10. Disapproval of Board Actions**

If the governing bodies of a majority of the taxing units entitled to vote on the appointment of board members adopt resolutions disapproving an action, other than adoption of the budget, by the appraisal district board of directors and file them with the secretary of the board within 15 days after the action is taken, the action is revoked effective the day after the day on which the required number of resolutions is filed.

[Acts 1981, 67th Leg., 1st C.S., p. 124, ch. 13, § 21, eff. Aug. 14, 1981.]

**§ 6.11. Competitive Bidding Requirement**

(a) The board of directors of an appraisal district may not make a contract requiring an expenditure of more than \$5,000 unless the proposed contract is submitted to competitive bidding.

(b) The board of directors is subject to the same requirements and has the same powers regarding the following matters as apply to a commissioners court under The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes):

- (1) notice of the contract;
- (2) issuance of the contract to the lowest responsible bidder;
- (3) rejection of bids;
- (4) expenditure of funds on the completion and acceptance of the contract;
- (5) exceptions to the competitive bidding requirement;
- (6) change orders; and
- (7) effect of noncompliance with the competitive bidding requirements.

(c) The notice of the contract shall be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation in the district, the notice shall be posted at the appraisal office for the district.

[Acts 1981, 67th Leg., 1st C.S., p. 124, ch. 13, § 21, eff. Aug. 14, 1981.]

[Sections 6.12 to 6.20 reserved for expansion]

**SUBCHAPTER B. ASSESSORS AND COLLECTORS**

**§ 6.21. County Assessor-Collector**

(a) The assessor-collector for a county is determined as provided by Article VIII, Sections 14, 16, and 16a, of the Texas Constitution.

(b) If a county with a population of less than 10,000 authorizes a separate county assessor-collector as provided by Article VIII, Section 16a, of the Texas Constitution, the commissioners court may appoint a county assessor-collector to serve until an assessor-collector is elected at the next general election and has qualified.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 6.22. Assessor and Collector for Other Taxing Units**

(a) The assessor and collector for a taxing unit other than a county or a home-rule city are determined by the law creating or authorizing creation of the unit.

(b) The assessor and collector for a home-rule city are determined by the city's charter and ordinances.

(c) The governing body of a taxing unit authorized to have its own assessor and collector by official action in the manner required by law for official action by the body may require the county to assess and collect the taxes the unit imposes in the county in the manner in which the county assesses and collects its taxes. The governing body of the unit may revoke the requirement at any time by the same official action.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 6.23. Duties of Assessor and Collector**

(a) The county assessor-collector shall assess and collect taxes on property in the county for the county. He shall also assess and collect taxes on property for another taxing unit if:

- (1) the law creating or authorizing creation of the unit requires it to use the county assessor-collector for the taxes the unit imposes in the county;
- (2) the law creating or authorizing creation of the unit does not mention who assesses and collects its taxes and the unit imposes taxes in the county;
- (3) the governing body of the unit requires the county to assess and collect its taxes as provided by Subsection (c) of Section 6.22 of this code; or
- (4) required by an intergovernmental contract.

(b) The assessor and collector for a taxing unit other than a county shall assess, collect, or assess and collect taxes, as applicable, for the unit. He

shall also assess, collect, or assess and collect taxes, as applicable, for another unit if:

- (1) required by or pursuant to the law creating or authorizing creation of the other unit; or
- (2) required by an intergovernmental contract.

[Acts 1979, 66th Leg., p. 2227, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 125, ch. 13, § 22, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4819, ch. 851, § 2, eff. Aug. 29, 1983.]

#### § 6.24. Contracts for Assessment and Collection

(a) The governing body of a taxing unit other than a county may contract as provided by the Interlocal Cooperation Act<sup>1</sup> with the governing body of another unit or with the board of directors of an appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes.

(b) The commissioners court with the approval of the county assessor-collector may contract as provided by the Interlocal Cooperation Act with the governing body of another taxing unit in the county or with the board of directors of the appraisal district for the other unit or the district to perform duties relating to the assessment or collection of taxes for the county. If a county contracts to have its taxes assessed and collected by another taxing unit or by the appraisal district, the contract shall require the other unit or the district to assess and collect all taxes the county is required to assess and collect.

(c) Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.

(d) A contract under this section may provide for the entity that collects taxes to contract with an attorney, as provided by Section 6.30 of this code, for collection of delinquent taxes.

[Acts 1979, 66th Leg., p. 2228, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 125, ch. 13, §§ 23, 24, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.]

<sup>1</sup> Civil Statutes, art. 4413(32c).

#### § 6.25. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 167(a), eff. Jan. 1, 1982

#### § 6.26. Election to Consolidate Assessing and Collecting Functions

(a) The qualified voters residing in an appraisal district by petition submitted to the county clerk of the county principally served by the appraisal district may require that an election be held to determine whether or not to require the appraisal district, the county assessor-collector, or a specified taxing unit, within the appraisal district to assess, collect, or assess and collect property taxes on property appraised by the district for all taxing units.

(b) The qualified voters of a taxing unit that assesses, collects, or assesses and collects its own property taxes by petition submitted to the governing body of the taxing unit may require that an

election be held to determine whether or not to require the appraisal district, the county assessor-collector, or another taxing unit that is assessing and collecting property taxes to assess, collect, or assess and collect the unit's property taxes.

(c) A petition is valid if:

(1) it states that it is intended to require an election in the appraisal district or taxing unit on the question of consolidation of assessing or collecting functions or both;

(2) it states the functions to be consolidated and identifies the entity or office that will be required to perform the functions; and

(3) it is signed by a number of qualified voters equal to at least 10 percent of the number of qualified voters, according to the most recent official list of qualified voters, residing in the appraisal district, if the petition is authorized by Subsection (a) of this section, or in the taxing unit, if the petition is authorized by Subsection (b) of this section, or by 10,000 qualified voters, whichever number is less.

(d) Not later than the 10th day after the day the petition is submitted, the commissioners court, if the petition is authorized by Subsection (a) of this section, or the governing body of the taxing unit, if the petition is authorized by Subsection (b) of this section, shall determine whether the petition is valid and pass a resolution stating its finding. The signature of a person may not be counted for purposes of validating the petition under Subsection (c)(3) of this section if:

(1) the person does not enter beside his signature at the time of his signing the date on which he signs the petition; or

(2) the person signs the petition more than 30 days before the date on which the petition is submitted to the county clerk or the governing body.

(e) If the commissioners court or the governing body finds that the petition is valid, it shall order that an election be held in the district or taxing unit on the next uniform election date prescribed by the Texas Election Code that is more than 60 days after the last day on which it could have acted to approve or disapprove the petition. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Requiring the (name of entity or office) to (assess, collect, or assess and collect, as applicable) property taxes for (all taxing units in the appraisal district for \_\_\_\_\_ county or name of taxing unit or units, as applicable)."

(f) If a majority of the qualified voters voting on the question in the election favor the proposition, the entity or office named by the ballot shall perform the functions named by the ballot beginning with the next time property taxes are assessed or collected, as applicable, that is more than 90 days after the date of the election. If the governing bodies (and appraisal district board of directors

when the district is involved) agree, a function may be consolidated when performance of the function begins in less than 90 days after the date of the election.

(g) A taxing unit shall pay the actual cost of performance of the functions to the office or entity that performs functions for it pursuant to an election as provided by this section.

(h) If a taxing unit is required by election pursuant to Subsection (b) of this section to assess, collect, or assess and collect property taxes for another taxing unit, it also shall perform the functions for all taxing units for which the other unit previously performed those functions pursuant to law or inter-governmental contract.

(i) If functions are consolidated by an election, a taxing unit may not terminate the consolidation within two years after the date of the consolidation.

(j) An appraisal district may not be required by an election to assess, collect, or assess and collect taxes on property outside the district's boundaries. A taxing unit may not be required by an election to assess, collect, or assess and collect taxes on property outside the boundaries of the appraisal district that appraises property for the unit.

[Acts 1979, 66th Leg., p. 2229, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 125, ch. 13, § 25, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4612, ch. 785, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies to petitions submitted under Section 6.26, Tax Code, on or after the effective date of this Act. Petitions submitted under Section 6.26, Tax Code, before the effective date of this Act are covered by Section 6.26 as it existed when the petition was submitted for validation, and the former law is continued in effect for that purpose."

### § 6.27. Compensation for Assessment and Collection

(a) Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.

(b) The county assessor-collector is entitled to a reasonable fee, which may not exceed the actual costs incurred, for assessing and collecting taxes for a taxing unit pursuant to Subdivisions (1) through (3) of Subsection (a) of Section 6.23 of this code.

(c) The assessor or collector for a taxing unit other than a county is entitled to reasonable compensation, which may not exceed the actual costs incurred, for assessing or collecting taxes for a taxing unit pursuant to Subsection (b) of Section 6.23 of this code.

[Acts 1979, 66th Leg., p. 2230, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 125, ch. 13, § 26, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.]

### § 6.28. Bonds for State and County Taxes

(a) To qualify for office, a person elected or appointed as county assessor-collector must, within 20 days after receiving notice of his election or appointment, give bonds to the state and to the county, conditioned on the faithful performance of his duties as assessor-collector.

(b) The bond for state taxes must be payable to the governor and his successors in office in an amount equal to five percent of the net state collections from motor vehicle sales and use taxes and motor vehicle registration fees in the county during the year ending August 31 preceding the date bond is given, except that the amount of bond may not be less than \$2,500 or more than \$100,000. To be effective, the bond must be approved by the commissioners court and the state comptroller of public accounts.

(c) The bond for county taxes must be payable to the commissioners court in an amount equal to 10 percent of the total amount of county taxes imposed in the preceding tax year, except that the amount of the bond may not be more than \$100,000. To be effective, the bond must be approved by the commissioners court.

(d) The state comptroller of public accounts or the commissioners court may require a new bond for state taxes at any time. The commissioners court may require a new bond for county taxes at any time. However, the total amount of state bonds or county bonds required of an assessor-collector may not exceed \$100,000 at one time. The commissioners court shall suspend the assessor-collector from office and begin removal proceedings if he fails to give new bond within a reasonable time after demand.

(e) The assessor-collector's official oath and bonds for state and county taxes shall be recorded in the office of the county clerk, and the county judge shall submit the bond for state taxes to the state comptroller of public accounts.

(f) A county shall pay a reasonable premium for the assessor-collector's bonds for state and county taxes out of the county general revenue fund on presentation to the commissioners court of a bill for the premium authenticated as required by law for other claims against the county. A court of competent jurisdiction may determine the reasonableness of any amount claimed as premium.

[Acts 1979, 66th Leg., p. 2230, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 126, ch. 13, § 27, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4820, ch. 851, § 3, eff. Aug. 29, 1983.]

### § 6.29. Bonds for Other Taxes

(a) A taxing unit, other than a county, that has its own collector shall require him to give bond conditioned on the faithful performance of his duties. To be effective, the bond must be made payable to and must be approved by the governing body of the unit

in an amount determined by the governing body. The governing body may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The governing body may prescribe additional requirements for the bond.

(b) A taxing unit whose taxes are collected by the collector for another taxing unit may require the collector to give bond conditioned on the faithful performance of his duties. To be effective, the bond must be made payable to and must be approved by the governing body of the unit requiring bond in an amount determined by the governing body. The governing body may prescribe additional requirements for the bond.

(c) A taxing unit shall pay the premium for a bond required pursuant to this section from its general fund or as provided by intergovernmental contract.

[Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 6.30. Attorneys Representing Taxing Units

(a) The county attorney or, if there is no county attorney, the district attorney shall represent the county to enforce the collection of delinquent taxes if the commissioners court does not contract with a private attorney as provided by Subsection (c) of this section.

(b) The governing body of a taxing unit other than a county may determine who represents the unit to enforce the collection of delinquent taxes. If a taxing unit collects taxes for another taxing unit, the attorney representing the unit to enforce the collection of delinquent taxes may represent the other unit with consent of its governing body.

(c) The governing body of a taxing unit may contract with any competent attorney to represent the unit to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20 percent of the amount of delinquent tax, penalty, and interest collected.

(d) Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.

(e) A contract with an attorney that does not conform to the requirements of this section is void.

[Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 126, ch. 13, § 28, eff. Jan. 1, 1982; Acts 1983, 68th Leg., pp. 4821, 4829, ch. 851, §§ 4, 28, eff. Aug. 29, 1983.]

[Sections 6.31 to 6.40 reserved for expansion]

### SUBCHAPTER C. APPRAISAL REVIEW BOARD

#### § 6.41. Appraisal Review Board

(a) The appraisal review board is established for each appraisal district.

(b) The board consists of three members. However, the district board of directors by resolution of a majority of its members may increase the size of the appraisal review board to not more than nine members or, in a district established for a county with a population of at least 250,000, to not more than 15 members or, in a district established for a county with a population of at least 500,000, to not more than 30 members.

(c) To be eligible to serve on the board, an individual must be a resident of the district and must have resided in the district for at least two years. A member of the appraisal district board of directors or an officer or employee of the State Property Tax Board, the appraisal office, or a taxing unit is ineligible to serve on the board.

(d) Members of the board are appointed by resolution of a majority of the appraisal district board of directors. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(e) Members of the board hold office for terms of two years beginning January 1. The appraisal district board of directors by resolution shall provide for staggered terms, so that the terms of as close to one-half of the members as possible expire each year. In making the initial appointments, the board of directors shall designate those members who serve terms of one year.

[Acts 1979, 66th Leg., p. 2231, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 29, eff. Jan. 1, 1982.]

#### § 6.42. Organization, Meetings, and Compensation

(a) A majority of the appraisal review board constitutes a quorum. The board shall elect a chairman and a secretary from its members.

(b) The board may meet at any time at the call of the chairman or as provided by rule of the board. The board shall meet to examine the appraisal records within 10 days after the date the chief appraiser submits the records to the board.

(c) Members of the board are entitled to per diem set by the appraisal district budget for each day the board meets and to reimbursement for actual and necessary expenses incurred in the performance of board functions as provided by the district budget.

[Acts 1979, 66th Leg., p. 2232, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 6.43. Personnel

The appraisal review board may employ legal counsel as provided by the district budget or use the services of the county attorney and may use the staff of the appraisal office for clerical assistance.

[Acts 1979, 66th Leg., p. 2232, ch. 841, § 1, eff. Jan. 1, 1982.]



**SUBTITLE C. TAXABLE PROPERTY AND EXEMPTIONS**

**CHAPTER 11. TAXABLE PROPERTY AND EXEMPTIONS**

**SUBCHAPTER A. TAXABLE PROPERTY**

**Sec.**

- 11.01. Real and Tangible Personal Property.
- 11.02. Intangible Personal Property.

**SUBCHAPTER B. EXEMPTIONS**

- 11.11. Public Property.
- 11.12. Federal Exemptions.
- 11.13. Residence Homestead.
- 11.14. Household Goods and Personal Effects.
- 11.15. Family Supplies.
- 11.16. Farm Products.
- 11.161. Implements of Farming or Ranching.
- 11.17. Cemeteries.
- 11.18. Charitable Organizations.
- 11.19. Youth Spiritual, Mental, and Physical Development Associations.
- 11.20. Religious Organizations.
- 11.21. Schools.
- 11.22. Disabled Veterans.
- 11.23. Miscellaneous Exemptions.
- 11.24. Historic Sites.
- 11.25. Automobiles.
- 11.26. Limitation of School Tax on Homesteads of Elderly.
- 11.27. Solar and Wind-Powered Energy Devices.
- 11.28. Property Exempted From City Taxation by Agreement.

**SUBCHAPTER C. ADMINISTRATION OF EXEMPTIONS**

- 11.41. Partial Ownership of Exempt Property.
- 11.42. Exemption Qualification Date.
- 11.43. Application for Exemption.
- 11.431. Late Application for Homestead Exemption.
- 11.44. Notice of Application Requirements.
- 11.45. Action on Exemption Applications.
- 11.46. Compilation of Partial Exemptions.
- 11.47. Mail Survey of Residence Homesteads.

**SUBCHAPTER A. TAXABLE PROPERTY**

**§ 11.01. Real and Tangible Personal Property**

(a) All real and tangible personal property that this state has jurisdiction to tax is taxable unless exempt by law.

(b) This state has jurisdiction to tax real property if located in this state.

(c) This state has jurisdiction to tax tangible personal property if the property is:

- (1) located in this state for longer than a temporary period;
- (2) temporarily located outside this state and the owner resides in this state; or
- (3) used continually, whether regularly or irregularly, in this state.

(d) Goods, wares, ores (other than oil, gas, and other petroleum products), and merchandise are presumed to be in interstate commerce and/or are not

to be located in this state for longer than a temporary period if the property is:

- (1) transported from outside this state into this state to be forwarded outside this state;
- (2) detained in this state for assembling, storing, manufacturing, processing, or fabricating purposes; and
- (3) not located in this state for longer than 175 days.

(e) Tangible personal property that is operated or located exclusively outside this state during the year preceding the tax year and on January 1 of the tax year is not taxable in this state.

[Acts 1979, 66th Leg., p. 2233, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, 68th Leg., p. 1908, ch. 353, § 1, eff. Jan. 1, 1984.]

**§ 11.02. Intangible Personal Property**

(a) Except as provided by Subsection (b) of this section, intangible personal property is not taxable.

(b) Stock in a banking corporation, intangible property of an unincorporated bank, intangible property of a transportation business listed in Subchapter A, Chapter 24 of this code,<sup>1</sup> and intangible property governed by Article 4.01, Insurance Code, or by Section 11.09, Texas Savings and Loan Act,<sup>2</sup> are taxable as provided by law, unless exempt by law, if this state has jurisdiction to tax those intangibles.

(c) This state has jurisdiction to tax intangible personal property, other than stock in a banking corporation, if the property is:

- (1) owned by a resident of this state; or
- (2) located in this state for business purposes.

(d) This state has jurisdiction to tax stock in a banking corporation that is incorporated in this state or, if the bank is a national bank, is located in this state.

[Acts 1979, 66th Leg., p. 2233, ch. 841, § 1, eff. Jan. 1, 1980.]

<sup>1</sup> Section 24.01 et seq.

<sup>2</sup> Civil Statutes, art. 852a, § 11.09.

[Sections 11.03 to 11.10 reserved for expansion]

**SUBCHAPTER B. EXEMPTIONS**

**§ 11.11. Public Property**

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by Section 25.19 of this code shall be sent to the State Property Tax Board, and the board shall appear in behalf of the state in any protest or appeal relating to taxation of Permanent University Fund land.

(c) Agricultural or grazing land owned by a county for the benefit of public schools under Article

VII, Section 6, of the Texas Constitution is taxable for all purposes. The county shall pay the taxes on the land from the revenue derived from the land. If revenue from the land is insufficient to pay the taxes, the county shall pay the balance from the county general fund.

(d) Property owned by the state that is not used for public purposes is taxable. Property owned by a state agency or institution is not used for public purposes if the property is rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state agency or institution or used to provide private residential housing for compensation to members of the public other than students and employees of the state agency or institution owning the property, unless the residential use is secondary to its use by an educational institution primarily for instructional purposes. Any notice required by Section 25.19 of this code shall be sent to the agency or institution that owns the property, and it shall appear in behalf of the state in any protest or appeal related to taxation of the property.

(e) It is provided, however, that property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined by Section 61.003(7), Texas Education Code, but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state is not taxable.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 30, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 4821, ch. 851, § 5, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5419, ch. 1007, § 1, eff. Jan. 1, 1984.]

Subsections (a) and (f) of § 168 of the 1981 amendatory act provide:

"(a) An amendment by this Act of Subchapter B, Chapter 11, Property Tax Code, takes effect January 1, 1982."

"(f) Section 11.11(d), Property Tax Code, as added by this Act, takes effect January 1, 1984."

#### § 11.12. Federal Exemptions

Property exempt from ad valorem taxation by federal law is exempt from taxation.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 11.13. Residence Homestead

(a) A family or single adult is entitled to an exemption from taxation for the county purposes authorized in Article VIII, Section 1-a, of the Texas Constitution of \$3,000 of the assessed value of his residence homestead.

(b) An adult is entitled to exemption from taxation by a school district of \$5,000 of the appraised value of his residence homestead.

(c) In addition to the exemption provided by Subsection (b) of this section, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of \$10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxation by a taxing unit of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

(1) by the governing body of the taxing unit; or

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of the taxing unit, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit.

(e) The amount of an exemption adopted as provided by Subsection (d) of this section is \$3,000 of the appraised value of the residence homestead unless a larger amount is specified by:

(1) the governing body authorizing the exemption if the exemption is authorized as provided by Subdivision (1) of Subsection (d) of this section; or

(2) the petition for the election if the exemption is authorized as provided by Subdivision (2) of Subsection (d) of this section.

(f) Once authorized, an exemption adopted as provided by Subsection (d) of this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by Subdivision (2) of Subsection (d) of this section. In the case of a decrease, the amount of the exemption may not be reduced to less than \$3,000 of the market value.

(g) If the residence homestead exemption provided by Subsection (d) of this section is adopted by a county that levies a tax for the county purposes authorized by Article VIII, Section 1-a, of the Texas Constitution, the residence homestead exemptions provided by Subsections (a) and (d) of this section may not be aggregated for the county tax purposes. An individual who is eligible for both exemptions is entitled to take only the exemption authorized as provided by Subsection (d) of this section for purposes of that county tax.

(h) Joint or community owners may not each receive the same exemption provided by or pursuant to this section for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption but may choose either.

(i) The assessor and collector for a taxing unit may disregard the exemptions authorized by Subsection (b), (c), (d), or (n) of this section and assess

and collect a tax pledged for payment of debt without deducting the amount of the exemption if:

- (1) prior to adoption of the exemption, the unit pledged the taxes for the payment of a debt; and
- (2) granting the exemption would impair the obligation of the contract creating the debt.

(j) For purposes of this section, "residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

- (1) is owned by one or more individuals;
- (2) is designed or adapted for human residence;
- (3) is used as a residence; and
- (4) is occupied as his principal residence by an owner who qualifies for the exemption.

(k) A qualified residential structure does not lose its character as a residence homestead if a portion of the structure is rented to another or is used primarily for other purposes that are incompatible with the owner's residential use of the structure. However, the amount of any residence homestead exemption does not apply to the value of that portion of the structure that is used primarily for purposes that are incompatible with the owner's residential use.

(l) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence if that owner does not establish a different principal residence and intends to return and occupy the structure as his principal residence.

(m) In this section:

- (1) "Disabled" means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.
- (2) "School district" means a political subdivision organized to provide general elementary and secondary public education. "School district" does not include a junior college district or a political subdivision organized to provide special education services.

(n) In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a taxing unit of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit in the manner provided by law for official action by the body. If the percentage set by the taxing unit produces an exemption in a tax year of less than \$5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of \$5,000 of the appraised value. The percentage adopted by the taxing unit may not exceed 40 percent for the tax years 1982 through 1984, 30 percent for the tax years 1985 through

1987, and 20 percent in the tax year 1988 and each subsequent tax year.

[Acts 1979, 66th Leg., p. 2234, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 31, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4822, ch. 851, § 6, eff. Aug. 29, 1983.]

Acts 1981, 67th Leg., p. 3082, ch. 814, eff. June 17, 1981, as amended by Acts 1981, 67th Leg., 1st C.S., p. 181, ch. 13, § 165, eff. Aug. 14, 1981, provides:

"Sec. 1. An individual who, in 1979, qualified for but did not receive the limitation on increases in school district taxes on his residence homestead pursuant to Section 7, Article 7150.5, Revised Civil Statutes of Texas, 1925, as it existed December 31, 1979, may file an application with the chief appraiser to limit taxes imposed by the school district on the homestead for 1982 to the amount of taxes the district would have imposed for 1979 if the individual had applied for and received in 1979 the residence homestead exemption for individuals 65 years of age or older. The application must be filed before April 1, 1982.

"Sec. 2. (a) The chief appraiser with whom an application is filed pursuant to Section 1 of this Act shall determine the validity of the application before April 15, 1982, or as soon thereafter as practicable.

"(b) The chief appraiser shall give each applicant written notice of the denial or modification of the exemption within five days after the date he makes that determination.

"Sec. 3. (a) If the chief appraiser determines that an applicant was qualified in 1979 for the residence homestead exemption for individuals 65 years of age or older, he shall make an entry on the appraisal records of the school district in which the homestead is taxable reflecting that the individual is entitled to a limitation on school district taxes on his homestead for 1982.

"(b) Taxes imposed by the school district for 1982 on the applicant's homestead may not exceed the amount of taxes the district would have imposed on the homestead for 1979 if the individual had applied for and received in 1979 the residence homestead exemption for individuals 65 years of age or older.

"Sec. 4. (a) The chief appraiser shall publish in a newspaper a notice of the tax relief provided by this Act. The notice shall be published once each week for three weeks immediately preceding the date of the deadline prescribed by Section 1 of this Act for filing an application for the tax relief.

"(b) The chief appraiser of each appraisal district shall include a notice of the availability of the tax relief provided by this Act with each application form sent pursuant to Section 11.44(a) of the Tax Code in the 1982 tax year to the previous year's claimants of a homestead exemption provided by Section 11.13(c) of the Tax Code."

**§ 11.14. Household Goods and Personal Effects**

(a) An individual is entitled to an exemption from taxation of his household goods and personal effects that are not held or used for production of income.

(b) In this section:

(1) "Household goods" means furnishings, appliances, utensils, and other tangible personal property used primarily in or around a residence by the residents and their guests.

(2) "Personal effects" means tangible personal property that normally is worn or carried by an individual or that is used by an individual in personal, recreational, or other activities that do not involve production of income. "Personal effects" does not include a motor vehicle, boat, or other means of transportation, a trailer that must be registered for operation on a highway, or a

mobile home or similar vehicle designed for occupancy as a dwelling.

[Acts 1979, 66th Leg., p. 2236, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 11.15. Family Supplies

A family is entitled to an exemption from taxation of its family supplies for home or farm use.

[Acts 1979, 66th Leg., p. 2236, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 11.16. Farm Products

(a) A producer is entitled to an exemption from taxation of the farm products that he produces and owns. A nursery product, as defined by Section 71.041, Agriculture Code, is a farm product for purposes of this section if it is in a growing state.

(b) Farm products in the hands of the producer are exempt.

(c) For purposes of this exemption, the following definitions apply:

(1) "Farm products" includes livestock and poultry.

(2) "In the hands of the producer," for livestock and poultry means under the ownership of the person who is financially providing for the physical requirements of such livestock and poultry on January 1 of the tax year.

[Acts 1979, 66th Leg., p. 2236, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 457, ch. 192, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 1487, ch. 388, § 3, eff. Sept. 1, 1981.]

Section 1 of Acts 1981, 67th Leg., p. 1012, ch. 388, enacts the Agriculture Code.

#### § 11.161. Implements of Farming or Ranching

Implements of husbandry<sup>1</sup> that are used in the production of farm or ranch products are exempt from ad valorem taxation.

[Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 32, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4823, ch. 851, § 7, eff. Aug. 29, 1983.]

<sup>1</sup> So in enrolled bill; probably should read "husbandry".

#### § 11.17. Cemeteries

A person is entitled to an exemption from taxation of the property he owns and uses exclusively for human burial and does not hold for profit.

[Acts 1979, 66th Leg., p. 2236, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 11.18. Charitable Organizations

(a) An organization that qualifies as a charitable organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of the buildings and tangible personal property that:

(1) are owned by the charitable organization; and

(2) except as permitted by Subsection (b) of this section, are used exclusively by qualified charitable organizations.

(b) Use of exempt property by persons who are not charitable organizations qualified as provided by Subsection (c) of this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.

(c) To qualify as a charitable organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by Subsection (d) of this section, engage exclusively in performing one or more of the following charitable functions:

(A) providing medical care without regard to the beneficiaries' ability to pay;

(B) providing support or relief to orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, the impoverished, or victims of natural disaster without regard to the beneficiaries' ability to pay;

(C) providing support to elderly persons or the handicapped without regard to the beneficiaries' ability to pay;

(D) preserving a historical landmark or site;

(E) promoting or operating a museum, zoo, library, theater of the dramatic arts, or symphony orchestra or choir;

(F) promoting or providing humane treatment of animals;

(G) acquiring, storing, transporting, selling, or distributing water for public use;

(H) answering fire alarms and extinguishing fires with no compensation or only nominal compensation to the members of the organization;

(I) promoting the athletic development of boys or girls under the age of 18 years;

(J) preserving or conserving wildlife;

(K) promoting educational development through loans or scholarships to students;

(L) providing halfway house services pursuant to a certification as a halfway house by the Board of Pardons and Paroles;

(M) providing permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents' ability to pay; or

(N) promoting or operating an art gallery, museum, or collection, in a permanent location or on tour, that is open to the public;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization performs one or more of the charitable functions specified by Paragraph (C), (D), (E), (F), (G), (J), (K), (M), or (N) of Subdivision (1) of this subsection, be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;<sup>1</sup> and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's charitable functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.<sup>2</sup>

(d) Performance of noncharitable functions by a charitable organization that owns or uses exempt property does not result in loss of an exemption authorized by this section if those other functions are incidental to the organization's charitable functions.

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

(f) An exemption authorized by Paragraph (J) of Subdivision (1) of Subsection (c) of this section is limited to land and improvements and may not exceed 1,000 acres in any one county.

[Acts 1979, 66th Leg., p. 2236, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 127, ch. 13, § 33, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 2207, ch. 412, § 1, eff. Jan. 1, 1984.]

<sup>1</sup> Civil Statutes, art. 1396-1.01 et seq.  
<sup>2</sup> 26 U.S.C.A. § 501(c)(3).

**§ 11.19. Youth Spiritual, Mental, and Physical Development Associations**

(a) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of the tangible property that:

(1) is owned by the association;

(2) except as permitted by Subsection (b) of this section, is used exclusively by qualified youth development associations; and

(3) is reasonably necessary for the operation of the association.

(b) Use of exempt tangible property by persons who are not youth development associations qualified as provided by Subsection (d) of this section does not result in the loss of an exemption under this section if the use is incidental to use by quali-

fied associations and benefits the individuals the associations serve.

(c) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds the association owns that are used exclusively for the support of the association and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a youth development association for the purposes of this section, an association must:

(1) engage primarily in promoting the threefold spiritual, mental, and physical development of boys, girls, young men, or young women;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) operate in conjunction with a state or national organization that is organized and operated for the same purpose as the association; and

(4) by charter, bylaw, or other regulation adopted by the association to govern its affairs:

(A) pledge its assets for use in performing the association's youth development functions; and

(B) direct that on discontinuance of the association by dissolution or otherwise the assets are to be transferred to this state or to a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.<sup>1</sup>

[Acts 1979, 66th Leg., p. 2237, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 129, ch. 13, § 34, eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 501(c)(3).

**§ 11.20. Religious Organizations**

(a) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of:

(1) the real property that is owned by the religious organization, is used primarily as a place of regular religious worship, and is reasonably necessary for engaging in religious worship;

(2) the tangible personal property that is owned by the religious organization and is reasonably necessary for engaging in worship at the place of worship specified in Subdivision (1) of this subsection;

(3) the real property that is owned by the religious organization and is reasonably necessary for use as a residence (but not more than one acre of land for each residence) if the property:

(A) is used exclusively as a residence for those individuals whose principal occupation is to serve in the clergy of the religious organization; and

(B) produces no revenue for the religious organization; and

(4) the tangible personal property that is owned by the religious organization and is reasonably necessary for use of the residence specified by Subdivision (3) of this subsection.

(b) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of those endowment funds the organization owns that are used exclusively for the support of the religious organization and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(c) To qualify as a religious organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain; and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's religious functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.<sup>1</sup>

(d) Use of property that qualifies for the exemption prescribed by Subdivision (1) or (2) of Subsection (a) of this section for occasional secular purposes other than religious worship does not result in loss of the exemption if the primary use of the property is for religious worship and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship.

(e) For the purposes of this section, "religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.

[Acts 1979, 66th Leg., p. 2238, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 129, ch. 13, § 35, eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 501(c)(3).

#### § 11.21. Schools

(a) A person is entitled to an exemption from taxation of the buildings and tangible personal property that he owns and that are used for a school that is qualified as provided by Subsection (d) of this section if:

(1) the school is operated exclusively by the person owning the property;

(2) except as permitted by Subsection (b) of this section, the buildings and tangible personal property are used exclusively for educational functions; and

(3) the buildings and tangible personal property are reasonably necessary for the operation of the school.

(b) Use of exempt tangible property for functions other than educational functions does not result in loss of an exemption authorized by this section if those other functions are incidental to use of the property for educational functions and benefit the students or faculty of the school.

(c) A person who operates a school that is qualified as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds he owns that are used exclusively for the support of the school and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a school for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance at the place where its educational functions are carried on;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization is a corporation, be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;<sup>1</sup> and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's educational functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to an educational, charitable, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.<sup>2</sup>

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

[Acts 1979, 66th Leg., p. 2239, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 130, ch. 13, § 36, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 1396-1.01 et seq.  
<sup>2</sup> 26 U.S.C.A. § 501(c)(3).

**§ 11.22. Disabled Veterans**

(a) A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property he owns and designates as provided by Subsection (f) of this section in accordance with the following schedule:

an exemption of up to:	for a disability rating of	
	at least:	but not greater than:
\$1,500 of the assessed value	10%	30%
2,000	31	50
2,500	51	70
3,000	71 and over	

(b) A disabled veteran is entitled to an exemption from taxation of \$3,000 of the assessed value of a property he owns and designates as provided by Subsection (f) of this section if the veteran:

- (1) is 65 years of age or older and has a disability rating of at least 10 percent;
- (2) is totally blind in one or both eyes; or
- (3) has lost the use of one or more limbs.

(c) If a disabled veteran who is entitled to an exemption by Subsection (a) or (b) of this section dies, the veteran's surviving spouse is entitled to an exemption from taxation of a portion of the assessed value of a property the spouse owns and designates as provided by Subsection (f) of this section. The amount of the exemption is the amount of the veteran's exemption at time of death. The spouse is entitled to an exemption by this subsection only for as long as the spouse remains unmarried. If the spouse does not survive the veteran, each of the veteran's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section. The amount of exemption for each eligible child is computed by dividing the amount of the veteran's exemption at time of death by the number of eligible children.

(d) If an individual dies while on active duty as a member of the armed services of the United States:

(1) the individual's surviving spouse is entitled to an exemption from taxation of \$2,500 of the assessed value of the property the spouse owns and designates as provided by Subsection (f) of this section; and

(2) each of the individual's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section, the amount of exemption for each eligible child to be computed by dividing \$2,500 by the number of eligible children.

(e) An individual who qualifies for more than one exemption authorized by this section is entitled to aggregate the amounts of the exemptions, except that:

(1) a disabled veteran who qualifies for more than one exemption authorized by Subsections (a) and (b) of this section is entitled to only one exemption but may choose the greatest exemption for which he qualifies; and

(2) an individual who receives an exemption as a surviving spouse of a disabled veteran as provided by Subsection (c) of this section may not receive an exemption as a surviving child as provided by Subsection (c) or (d) of this section.

(f) An individual may receive an exemption to which he is entitled by this section against only one property, which must be the same for every taxing unit in which the individual claims the exemption. If an individual is entitled by Subsection (e) of this section to aggregate the amounts of more than one exemption, he must take the entire aggregated amount against the same property. An individual must designate on his exemption application form the property against which he takes an exemption under this section.

(g) An individual is not entitled to an exemption by this section unless he is a resident of this state.

(h) In this section:

(1) "Child" includes an adopted child or a child born out of wedlock whose paternity has been admitted or has been established in a legal action.

(2) "Disability rating" means a veteran's percentage of disability as certified by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served.

(3) "Disabled veteran" means a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served and whose disability is service-connected.

(4) "Surviving spouse" means the individual who was married to a disabled veteran or member

of the armed services at the time of the veteran's or member's death.

[Acts 1979, 66th Leg., p. 2240, ch. 841, § 1, eff. Jan. 1, 1980.]

### § 11.23. Miscellaneous Exemptions

(a) **Veterans' Organizations.** The American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans, Catholic War Veterans, or the American G.I. Forum is entitled to an exemption from taxation of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) that are owned and primarily used by that organization if the property is not used to produce revenue or held for gain.

(b) **Federation of Women's Clubs.** The Texas Federation of Women's Clubs is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain.

(c) **Nature Conservancy of Texas.** The Nature Conservancy of Texas, Incorporated, is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain, as long as the organization is a nonprofit corporation as defined by the Texas Non-Profit Corporation Act.<sup>1</sup>

(d) **Congress of Parents and Teachers.** The Texas Congress of Parents and Teachers is entitled to an exemption from taxation for state and county purposes of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) it owns and uses as its state headquarters.

(e) **Private Enterprise Demonstration Associations.** An association that engages exclusively in conducting nonprofit educational programs designed to demonstrate the American private enterprise system to children and young people and that operates under a state or national organization that is organized and operated for the same purpose is entitled to an exemption from taxation of the tangible property that it owns and uses exclusively if it is reasonably necessary for the association's operation.

(f) **Buffalo and Cattalo.** A person is entitled to an exemption from taxation of the buffalo and cattalo he owns that are not held for gain and that are used in experimental breeding with cattle for the purpose of producing an improved strain of meat animal or kept in parks to preserve the species.

(g) **Theater Schools.** A corporation that is organized to promote the teaching and study of the dramatic arts is entitled to an exemption from taxation of the property it owns and uses in the operation of a school for the dramatic arts if:

(1) the corporation is organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;

(2) the corporation is not self-sustaining in any fiscal year from income other than gifts, grants, or donations;

(3) the corporation is exempt from federal income taxes;

(4) the school maintains a theater-school program with regular classes for at least four grades, formal textbooks and curriculum, an enrollment of 150 or more students during each of at least two semesters every calendar year, and a faculty substantially all of whom hold degrees in theater arts from an accredited school of higher education;

(5) the school offers apprenticeship or other practical training in theater management and operation for college students or offers similar training for playwrights, actors, and production personnel; and

(6) more than one-half of each season's theatrical productions for which admission is charged have significant literary merit of the character that contributes to the educational programs of secondary schools and schools of higher education.

(h) **Biomedical Research Corporations.** A nonprofit corporation as defined in the Texas Non-Profit Corporation Act is entitled to an exemption from taxation of the property it owns and uses exclusively for biomedical research and education for the public benefit.

(i) **Community Service Clubs.** An association that qualifies as a community service club is entitled to an exemption from taxation of the tangible property the club owns that qualifies under Article VIII, Section 2, of the constitution and that is not used for profit or held for gain. To qualify as a community service club for the purposes of this subsection, an association must:

(1) be organized to promote and must engage primarily in promoting:

(A) the religious, educational, and physical development of boys, girls, young men, or young women;

(B) the development of the concepts of patriotism and love of country; and

(C) the development of interest in community, national, and international affairs;

(2) be affiliated with a state or national organization of similar purpose;

(3) be open to membership without regard to race, religion, or national origin; and

(4) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.



(j) Medical Center Development. All real and personal property owned by a nonprofit corporation, as defined in the Texas Non-Profit Corporation Act, and held for use in the development of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, and for other hospital, medical, and educational uses and uses reasonably related thereto, during the time remaining property is held for the development to completion of the medical center and not leased or otherwise used with a view to profit, is exempt from all ad valorem taxation as though the property were, during that time, owned and held by the state for health and educational purposes.

[Acts 1979, 66th Leg., p. 2242, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 130, ch. 13, § 37, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 1396-1.01 et seq.

§ 11.24. Historic Sites

The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure and the land necessary for access to and use of the structure, if the structure is:

- (1) designated as a Recorded Texas Historical Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or
- (2) designated as a historically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit.

[Acts 1979, 66th Leg., p. 2243, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 11.25. Automobiles

(a) Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.

(b) Except as provided by Subsection (c) of this section, a family or an individual who is not a member of a family is entitled to exemption from ad valorem taxation by a taxing unit of all automobiles that the family or individual owns and does not hold or use for production of income.

(c) The governing body of a taxing unit, by ordinance, resolution, or order, depending on the method prescribed by law for official action by that governing body, may provide for taxation of all automobiles. If the governing body of a taxing unit provides for taxation of all automobiles as provided by this subsection, the exemption prescribed by Subsection (b) of this section does not apply to that unit.

(d) A family owns an automobile for the purposes of this section if any member of the family owns the automobile.

(e) In this section, "automobile" means a passenger car or a light truck as those terms are defined

by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1979, 66th Leg., p. 697, ch. 302, art. 11, § 1, eff. Jan. 1, 1980; Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.]

§ 11.26. Limitation of School Tax on Homesteads of Elderly

(a) Except as provided by Subsection (b) of this section, a school district may not increase the total annual amount of ad valorem tax it imposes on the residence homestead of an individual 65 years or older above the amount of the tax it imposed in the first year the individual qualified that residence homestead for the exemption provided by Subsection (c) of Section 11.13 of this code. The tax officials shall continue to appraise the property and to calculate taxes as on other property, but if the tax so calculated exceeds the limitation imposed by this section, the tax imposed is the tax imposed in the first year the individual qualified the residence homestead for the exemption.

(b) If an individual makes improvements to his residence homestead, other than improvements required to comply with governmental requirements or repairs, the school district may increase the tax on the homestead in the first year the value of the homestead is increased on the appraisal roll because of the enhancement of value by the improvements. The amount of the tax increase is determined by applying the current tax rate to the difference in the assessed value of the homestead with the improvements and the assessed value it would have had without the improvements. The limitations imposed by Subsection (a) of this section then apply to the increased amount of tax until more improvements, if any, are made.

(c) The limitation on tax increases required by this section expires if on January 1:

- (1) none of the owners of the structure who qualify for the exemption and who owned the structure when the limitation first took effect is using the structure as a residence homestead; or
- (2) none of the owners of the structure qualifies for the exemption.

(d) If the appraisal roll provides for taxation of appraised value for a prior year because a residence homestead exemption for persons 65 years or older was erroneously allowed, the tax assessor shall add, as back taxes due as provided by Subsection (d) of Section 26.09 of this code, the positive difference if any between the tax that should have been imposed for that year and the tax that was imposed because of the provisions of this section.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 130, ch. 13, § 38, eff. Jan. 1, 1982.]

Special provisions relating to extension of filing deadline, elderly and disabled persons, property tax relief not claimed in 1979, see note under § 11.13.

### § 11.27. Solar and Wind-Powered Energy Devices

(a) A person is entitled to an exemption from taxation of the amount of appraised value of his property that arises from the installation or construction of a solar or wind-powered energy device that is primarily for production and distribution of energy for on-site use.

(b) The State Property Tax Board, with the assistance of the Texas Energy and Natural Resources Advisory Council, or its successor, shall develop guidelines to assist local officials in the administration of this section.

(c) In this section:

(1) "Solar energy device" means an apparatus designed or adapted to convert the radiant energy from the sun, including energy imparted to plants through photosynthesis employing the bioconversion processes of anaerobic digestion, gasification, pyrolysis, or fermentation, but not including direct combustion, into thermal, mechanical, or electrical energy; to store the converted energy, either in the form to which originally converted or another form; or to distribute radiant solar energy or the energy to which the radiant solar energy is converted.

(2) "Wind-powered energy device" means an apparatus designed or adapted to convert the energy available in the wind into thermal, mechanical, or electrical energy; to store the converted energy, either in the form to which originally converted or another form; or to distribute the converted energy.

[Acts 1981, 67th Leg., 1st C.S., p. 130, ch. 13, § 39, eff. Jan. 1, 1982.]

### § 11.28. Property Exempted From City Taxation by Agreement

The owner of property to which an agreement made under the Property Redevelopment and Tax Abatement Act<sup>1</sup> applies is entitled to exemption from taxation by an incorporated city or town or other taxing unit of all or part of the value of the property as provided by the agreement.

[Acts 1981, 67th Leg., 1st C.S., p. 56, ch. 5, § 7]

<sup>1</sup> Civil Statutes, art. 1066f.

Section 9 of the 1981 Act provides:

"This Act takes effect on the adoption of the constitutional amendment proposed by S.J.R. No. 8, 67th Legislature, 1st Called Session, 1981."

The constitutional amendment proposed by S.J.R. No. 8, Acts 1981, 67th Leg., 1st C.S., was adopted at an election held November 3, 1981.

[Sections 11.29 to 11.40 reserved for expansion]

## SUBCHAPTER C. ADMINISTRATION OF EXEMPTIONS

### § 11.41. Partial Ownership of Exempt Property

(a) Except as provided by Subsection (b) of this section, if a person who qualifies for an exemption

as provided by this chapter is not the sole owner of the property to which the exemption applies, the exemption is limited to the value of the property interest the person owns.

(b) If a person who qualifies for an exemption as provided by Section 11.13 or 11.22 of this code is not the sole owner of the property to which the exemption applies, the amount of the exemption is calculated on the basis of the value of the property interest the person owns.

(c) In the application of this section, community ownership by a person who qualifies for the exemption and his spouse is treated as if the person owns the community interest of his spouse.

[Acts 1979, 66th Leg., p. 2244, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 11.42. Exemption Qualification Date

(a) Except as provided by Subsection (b) of this section, eligibility for and amount of an exemption authorized by this chapter for any tax year are determined by a claimant's qualifications on January 1. A person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year.

(b) An exemption authorized by Section 11.11 of this code is effective immediately on qualification for the exemption.

[Acts 1979, 66th Leg., p. 2245, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 11.43. Application for Exemption

(a) To receive an exemption, a person claiming the exemption, other than an exemption authorized by Section 11.11, 11.12, 11.14, 11.15, 11.16, 11.161, or 11.25 of this code, must apply for the exemption. To apply for an exemption, a person must file an exemption application form with the chief appraiser for each appraisal district in which the property subject to the claimed exemption has situs.

(b) Except as provided by Subsection (c) of this section, a person required to apply for an exemption must apply each year he claims entitlement to the exemption.

(c) An exemption provided by Section 11.13, 11.18, 11.19, 11.20, 11.21, or 11.22 of this code, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e) of this section, the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm his current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

(d) A person required to claim an exemption must file a completed exemption application form before

May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing an exemption application by written order for a single period not to exceed 60 days.

(e) Except as provided by Section 11.431 of this code, if a person required to apply for an exemption in a given year fails to file timely a completed application form, he may not receive the exemption for that year.

(f) The State Property Tax Board, in prescribing the contents of the application form for each kind of exemption, shall ensure that the form requires an applicant to furnish the information necessary to determine the validity of the exemption claim. The board shall include on the forms a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The board shall include, on application forms for exemptions that do not have to be claimed annually, a statement explaining that the application need not be made annually and that if the exemption is allowed, the applicant has a duty to notify the chief appraiser when his entitlement to the exemption ends.

(g) A person who receives an exemption that is not required to be claimed annually shall notify the appraisal office in writing before May 1 after his entitlement to the exemption ends.

(h) If the chief appraiser learns of any reason indicating that an exemption previously allowed should be canceled, he shall investigate. If he determines that the property should not be exempt, he shall cancel the exemption and deliver written notice of the cancellation within five days after the date he makes the cancellation.

(i) If the chief appraiser discovers that an exemption that is not required to be claimed annually has been erroneously allowed in any one of the 10 preceding years, he shall add the property or appraised value that was erroneously exempted for each year to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation. If an exemption that was erroneously allowed did not apply to all taxing units in which the property was located, the chief appraiser shall note on the appraisal records, for each prior year, the taxing units that gave the exemption and are entitled to impose taxes on the property or value that escaped taxation.

[Acts 1979, 66th Leg., p. 2245, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 131, ch. 13, §§ 40, 41, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3442, ch. 574, § 1, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 4823, ch. 851, § 8, eff. Aug. 29, 1983.]

Special provisions relating to extension of filing deadline, elderly and disabled persons, property tax relief not claimed in 1979, see note under § 11.13.

Section 2 of Acts 1983, 68th Leg., p. 3442, ch. 574 provides:

"(a) This Act takes effect January 1, 1984.

"(b) A person who received an exemption under Section 11.22, Tax Code, for 1983 taxes is covered by Subsection (c), Section

11.43, Tax Code, as amended by this Act, to the same extent as would have been the case if that law, as amended by this Act, had been in effect in 1983."

**§ 11.431. Late Application for Homestead Exemption**

(a) The chief appraiser shall accept and approve or deny an application for a residence homestead exemption after the deadline for filing it has passed if it is filed not later than one year after the date the taxes on the homestead were paid or became delinquent, whichever is earlier.

(b) If a late application is approved after approval of the appraisal records by the appraisal review board, the chief appraiser shall notify the collector for each unit in which the residence is located. The collector shall deduct from the person's tax bill the amount of tax imposed on the exempted amount if the tax has not been paid. If the tax has been paid, the collector shall refund the amount of tax imposed on the exempted amount.

[Acts 1981, 67th Leg., 1st C.S., p. 132, ch. 13, § 42, eff. Jan. 1, 1982.]

**§ 11.44. Notice of Application Requirements**

(a) Before February 1 of each year, the chief appraiser shall deliver an appropriate exemption application form to each person who in the preceding year was allowed an exemption that must be applied for annually. He shall include a brief explanation of the requirements of Section 11.43 of this code.

(b) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of Section 11.43 of this code and the availability of application forms.

(c) The State Property Tax Board shall prescribe by rule the content of the explanation required by Subsection (a) of this section, and shall require that each exemption application form be printed and prepared:

- (1) as a separate form from any other form; or
- (2) on the front of the form if the form also provides for other information.

[Acts 1979, 66th Leg., p. 2246, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 132, ch. 13, § 43, eff. Jan. 1, 1982.]

**§ 11.45. Action on Exemption Applications**

(a) The chief appraiser shall determine separately each applicant's right to an exemption. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

- (1) approve the application and allow the exemption;
- (2) modify the exemption applied for and allow the exemption as modified;

(3) disapprove the application and request additional information from the applicant in support of the claim; or

(4) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for exemption filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser modifies or denies an exemption, he shall deliver a written notice of the modification or denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action.

[Acts 1979, 66th Leg., p. 2246, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 133, ch. 13, § 44, eff. Jan. 1, 1982.]

Special provisions relating to extension of filing deadline, elderly and disabled persons, property tax relief not claimed in 1979, see note under § 11.13.

#### § 11.46. Compilation of Partial Exemptions

Each year the chief appraiser shall compile and make available to the public a list showing for each taxing unit in the district the number of each kind of partial exemption allowed in that tax year and the total assessed value of each taxing unit that is exempted by each kind of partial exemption.

[Acts 1979, 66th Leg., p. 2246, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 133, ch. 13, § 45, eff. Jan. 1, 1982.]

#### § 11.47. Mail Survey of Residence Homesteads

(a) Between December 1 and December 31 of any year, the appraisal office may mail a card to each person who was allowed, in that year, one or more residence homestead exemptions that are not required to be claimed annually. The appraisal office shall include on the card the description of the property and the kind and amount of residence homestead exemptions allowed for the property according to the appraisal office records.

(b) The appraisal office shall include on each card mailed as authorized by this section a direction to the postal authorities not to forward it to any other address and to return it to the appraisal office if the addressee is no longer at the address to which the card was mailed.

(c) The appraisal office shall investigate each residence homestead exemption allowed a person whose card is returned undelivered.

[Acts 1981, 67th Leg., 1st C.S., p. 133, ch. 13, § 46, eff. Jan. 1, 1982.]

## SUBTITLE D. APPRAISAL AND ASSESSMENT

### CHAPTER 21. TAXABLE SITUS

#### SUBCHAPTER A. TAXABLE SITUS OF PROPERTY GENERALLY

##### Sec.

- 21.01. Real Property.
- 21.02. Tangible Personal Property Generally.
- 21.021. Vessels and Other Watercraft.
- 21.03. Interstate Allocation.
- 21.031. Allocation of Taxable Value of Vessels and Other Watercraft Used Outside This State.
- 21.04. Railroad Rolling Stock.
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- 21.06. Intangible Property Generally.
- 21.07. Intangibles of Certain Transportation Businesses.
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- 21.09. Bank Stock.

#### SUBCHAPTER B. DETERMINATION OF SITUS OF MOBILE HOMES

- 21.21. Definition.
- 21.22. Record of Movement.
- 21.23. Report of Movement.
- 21.24. Penalty for Failure to Record or Report Movement.
- 21.25. Exemption.

#### SUBCHAPTER A. TAXABLE SITUS OF PROPERTY GENERALLY

##### § 21.01. Real Property

Real property is taxable by a taxing unit if located in the unit on January 1.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1979.]

##### § 21.02. Tangible Personal Property Generally

Except as provided by Sections 21.021 and 21.04 of this code, tangible personal property is taxable by a taxing unit if:

- (1) it is located in the unit on January 1 for more than a temporary period;
- (2) it normally is located in the unit, even though it is outside the unit on January 1, if it is outside the unit only temporarily;
- (3) it normally is returned to the unit between uses elsewhere and is not located in any one place for more than a temporary period; or
- (4) the owner resides (for property not used for business purposes) or maintains his principal place of business in this state (for property used for business purposes) in the unit and the property is taxable in this state but does not have a taxable situs pursuant to Subdivisions (1) through (3) of this section.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1908, ch. 353, § 2, eff. Jan. 1, 1984.]

**§ 21.021. Vessels and Other Watercraft**

(a) A vessel or other watercraft used as an instrumentality of commerce (as defined in Section 21.031(b) of this code) is taxable pursuant to Section 21.02 of this code.

(b) A special-purpose vessel or other watercraft not used as an instrumentality of commerce (as defined in Section 21.031(b) of this code) is deemed to be located on January 1 for more than a temporary period for purposes of Section 21.02 of this code in the taxing unit in which it was physically located during the year preceding the tax year. If the vessel or watercraft was physically located in more than one taxing unit during the year preceding the tax year, it is deemed to be located for more than a temporary period for purposes of Section 21.02 of this code in the taxing unit in which it was physically located for the longest period during the year preceding the tax year or for 30 days, whichever is longer. If a vessel or other watercraft is not deemed to be located in any taxing unit on January 1 for more than a temporary period pursuant to this subsection, the property is taxable as provided by Subdivisions (2) through (4) of Section 21.02 of this code.

(c) This section applies solely to a determination of taxable situs and does not apply to a determination of jurisdiction to tax under Section 11.01 of this code.

[Acts 1983, 68th Leg., p. 1908, ch. 353, § 3, eff. Jan. 1, 1984.]

**§ 21.03. Interstate Allocation**

(a) If personal property that is taxable by a taxing unit is used continually outside this state, whether regularly or irregularly, the appraisal office shall allocate to this state the portion of the total market value of the property that fairly reflects its use in this state.

(b) The State Property Tax Board shall adopt rules:

- (1) identifying the kinds of property subject to this section; and
- (2) establishing formulas for calculating the proportion of total market value to be allocated to this state.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 21.031. Allocation of Taxable Value of Vessels and Other Watercraft Used Outside This State**

(a) If a vessel or other watercraft that is taxable by a taxing unit is used continually outside this state, whether regularly or irregularly, the appraisal office shall allocate to this state the portion of the total market value of the vessel or watercraft that fairly reflects its use in this state. The appraisal office shall not allocate to this state the portion of the total market value of the vessel or watercraft

that fairly reflects its use in another state or country, in international waters, or beyond the Gulfward boundary of this state.

(b) The appraisal office shall make the allocation as follows:

(1) The allocable portion of the total fair market value of a vessel or other watercraft used as an instrumentality of commerce that is taxable in this state is determined by multiplying the total fair market value by a fraction, the numerator of which is the number of miles the vessel or watercraft was operated in this state during the year preceding the tax year and the denominator of which is the total number of miles the vessel or watercraft was operated during the year preceding the tax year. For purposes of this section, "vessel or other watercraft used as an instrumentality of commerce" means a vessel or other watercraft that is primarily employed in the transportation of cargo, passengers, or equipment, and that is economically employed when it is moving from point to point as a means of transportation.

(2) The allocable portion of the total fair market value of a special-purpose vessel or other watercraft not used as an instrumentality of commerce is determined by multiplying the total fair market value by a fraction, the numerator of which is the number of days the vessel or watercraft was physically located in this state during the year preceding the tax year and the denominator of which is 365. For purposes of this section, "special-purpose vessel or other watercraft not used as an instrumentality of commerce" means a vessel or other watercraft that:

- (A) is designed to be transient and customarily is moved from location to location on a more or less regular basis;
- (B) is economically employed when operated in a localized area or in a fixed place; and
- (C) is not primarily employed to transport cargo, passengers, and equipment but rather to perform some specialized function or operation not requiring constant movement from point to point.

(c) A vessel or other watercraft used as an instrumentality of commerce or a special-purpose vessel or other watercraft not used as an instrumentality of commerce that is used outside this state and is in this state solely to be repaired, stored, or inspected is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes of Sections 11.01 and 21.02 of this code.

(d) If the allocation provisions of this section do not fairly reflect the use of a vessel or other watercraft in this state, an alternate allocation formula shall be utilized if the property owner or appraisal office demonstrates that:

- (1) the allocation formula specified in this section is arbitrary and unreasonable as applied to the vessel or watercraft; and

(2) the formula or indication of use proposed by the property owner or appraisal office more fairly reflects the vessel or watercraft's use in this state than that specified in this section.

(e) To receive an allocation of value under this section, a property owner must apply for the allocation on a form that substantially complies with the form prescribed by the State Property Tax Board. The application must be filed with the chief appraiser for the district in which the property to which the application applies is taxable before the approval of the appraisal records by the appraisal review board as provided by Section 41.12 of this code.

(f) The State Property Tax Board shall promulgate forms and may adopt rules consistent with the provisions of this section.

[Acts 1983, 68th Leg., p. 1908, ch. 353, § 3, eff. Jan. 1, 1984.]

#### § 21.04. Railroad Rolling Stock

(a) A portion of the total market value of railroad rolling stock that is appraised as provided by Subchapter B of Chapter 24 of this code<sup>1</sup> is taxable by each county in which the railroad operates.

(b) The portion of the total market value that is taxable by a county is determined by the provisions of Subchapter B of Chapter 24 of this code.

[Acts 1979, 66th Leg., p. 2247, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4823, ch. 851, § 9, eff. Aug. 29, 1983.]

<sup>1</sup> Section 24.31 et seq.

#### § 21.05. Repealed by Acts 1981, 67th Leg., p. 457, ch. 192, § 2, eff. Jan. 1, 1982

#### § 21.06. Intangible Property Generally

(a) Except as provided by Sections 21.07 through 21.09 of this code, intangible property is taxable by a taxing unit if the owner of the property resides in the unit on January 1, unless the property normally is used in this state for business purposes outside the unit. In that event, the intangible property is taxable by each taxing unit in which the property normally is used for business purposes.

(b) Depositing intangible property with an agency of the state pursuant to a law requiring or authorizing the deposit is not using it for a business purpose at the depository.

[Acts 1979, 66th Leg., p. 2248, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 21.07. Intangibles of Certain Transportation Businesses

(a) A portion of the total intangible value of a transportation business whose intangibles are appraised as provided by Subchapter A of Chapter 24 of this code is taxable by each county in which the business operates.

(b) The portion of the total value that is taxable as provided by Subsection (a) of this section is

determined by the provisions of Subchapter A of Chapter 24 of this code.

[Acts 1979, 66th Leg., p. 2248, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4823, ch. 851, § 10, eff. Aug. 29, 1983.]

#### § 21.08. Intangibles of Certain Financial Institutions

(a) The taxable situs of intangible property owned by an insurance company incorporated under the laws of this state is determined as provided by Article 4.01, Insurance Code.

(b) The taxable situs of intangible property owned by a savings and loan association is determined as provided by Section 11.09, Texas Savings and Loan Act.<sup>1</sup>

[Acts 1979, 66th Leg., p. 2248, ch. 841, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 852a, § 11.09.

#### § 21.09. Bank Stock

Stock in a banking corporation is taxable by a taxing unit if the bank is located in the unit on January 1.

[Acts 1979, 66th Leg., p. 2248, ch. 841, § 1, eff. Jan. 1, 1982.]

### SUBCHAPTER B. DETERMINATION OF SITUS OF MOBILE HOMES

#### § 21.21. Definition

In this subchapter, "mobile home" means "manufactured housing" as that term is defined by the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 3132, ch. 823, § 2, eff. Sept. 1, 1981.]

#### § 21.22. Record of Movement

(a) A person who moves a mobile home in this state shall make a record of the movement of the mobile home on a form prescribed by the State Property Tax Board.

(b) The board, in prescribing the contents of the form, shall ensure that the form requires the person to furnish the information necessary to identify the mobile home and determine its ownership, to name the person for whom the mobile home was moved, and to state the address of the place from which and the place to which the mobile home was moved.

(c) A person required to make a record of the movement of a mobile home shall keep the record for the period of time prescribed by the board. He shall keep the record at his principal place of business if he has one, and if he does not have one, he shall keep the record at his principal residence.

[Acts 1981, 67th Leg., p. 3132, ch. 823, § 2, eff. Sept. 1, 1981.]

**§ 21.23. Report of Movement**

(a) A person who moves a mobile home in this state shall file a report of the movement, accompanied by a \$10 filing fee, with the chief appraiser of the appraisal district in which the move began and of the appraisal district in which the move ended if different from that in which the move began or, if the move began outside this state, with the chief appraiser of the appraisal district in which the move ended. The report must be filed before the day on which the move begins.

(b) The report must be signed by the person required to file the report. When a corporation is required to file a report, an officer of the corporation must sign the report.

(c) For good cause shown, the chief appraiser may extend the filing deadline for the report for a single period not to exceed 15 days.

(d) All filing fees collected under this section shall be forwarded by the chief appraiser to the treasurer of the county for which the appraisal district is established to be deposited to the credit of the general fund of the county.

[Acts 1981, 67th Leg., p. 3132, ch. 823, § 2, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 134, ch. 13, § 47, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4903, ch. 868, § 1, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"The change in law made by this Act applies only to the moving of a mobile home that begins on or after the effective date of this Act. A move that begins before the effective date of this act is covered by the law in effect when the move begins, and the former law is continued in effect for that purpose."

**§ 21.24. Penalty for Failure to Record or Report Movement**

(a) If a person knowingly fails or refuses to make, keep, or report the movement of a mobile home as provided by this subchapter, the person is liable to the state for a civil penalty not exceeding \$200 for each failure or refusal.

(b) The attorney general, or the district attorney, criminal district attorney, or county attorney for the county in which the violation occurred if the attorney general has not filed a suit for the violation, shall collect the penalty in a suit on the behalf of the state. Venue for the suit is in:

(1) Travis County if the attorney general brings the suit; or

(2) the county in which the violation occurred or in which the person maintains his principal place of business or residence.

(c) A civil penalty recovered under this subchapter shall be deposited in the general revenue fund if the attorney general brings the suit, or in the general fund of the county in which the violation occurred, if a district attorney, criminal district attorney, or county attorney brings the suit.

[Acts 1981, 67th Leg., p. 3132, ch. 823, § 2, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4904, ch. 868, § 2, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"The change in law made by this Act applies only to the moving of a mobile home that begins on or after the effective date of this Act. A move that begins before the effective date of this Act is covered by the law in effect when the move begins, and the former law is continued in effect for that purpose."

**§ 21.25. Exemption**

The requirement by this subchapter of a record and report of movement of a mobile home in this state does not apply to a move that begins outside this state and ends outside this state nor to any move which is reported to the Department of Labor and Standards by a registrant pursuant to the provisions of the Texas Manufactured Housing Standards Act<sup>1</sup> and rules and regulations issued pursuant thereto.

[Acts 1981, 67th Leg., p. 3132, ch. 823, § 2, eff. Sept. 1, 1981.]

<sup>1</sup> Civil Statutes, art. 5221f.

**CHAPTER 22. RENDITIONS AND OTHER REPORTS**

**SUBCHAPTER A. INFORMATION FROM TAXPAYER**

- Sec.
- 22.01. Rendition Generally.
- 22.02. Rendition of Property Losing Exemption During Tax Year.
- 22.03. Report of Decreased Value.
- 22.04. Report by Bailee, Lessee, or Other Possessor.
- 22.05. Rendition by Railroad.
- 22.06. Rendition by Bank.
- 22.07. Inspection of Property.

**SUBCHAPTER B. REQUIREMENTS AND PROCEDURES**

- 22.21. Publicizing Requirements.
- 22.22. Method for Requiring Rendition or Report.
- 22.23. Filing Date.
- 22.24. Rendition and Report Forms.
- 22.25. Place and Manner of Filing.
- 22.26. Signature.
- 22.27. Confidential Information.

**SUBCHAPTER A. INFORMATION FROM TAXPAYER**

**§ 22.01. Rendition Generally**

(a) Except as provided by Chapter 24 of this code, a person shall render for taxation all tangible personal property used for the production of income that he owns or that he manages and controls as a fiduciary on January 1.

(b) When required by the chief appraiser, a person shall render for taxation any other taxable property that he owns or that he manages and controls as a fiduciary on January 1.

(c) A person may render for taxation any property that he owns or that he manages and controls as a fiduciary on January 1, although he is not required to render it by Subsection (a) or (b) of this section.

(d) A fiduciary who renders property shall indicate his fiduciary capacity and shall state the name and address of the owner.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 134, ch. 13, § 48, eff. Jan. 1, 1982.]

#### § 22.02. Rendition of Property Losing Exemption During Tax Year

If an exemption applicable to a property on January 1 terminates during the tax year, the person who owns or acquires the property on the date applicability of the exemption terminates shall render the property for taxation within 30 days after the date of termination.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 22.03. Report of Decreased Value

(a) A person who believes the appraised value of his property decreased during the preceding tax year for any reason other than normal depreciation may file an information report describing the property involved and stating the nature and cause of the decrease.

(b) Before determining the appraised value of property that is the subject of a completed and timely filed report as provided by Subsection (a) of this section, the chief appraiser must view the property to verify any reported change in appraised value and its cause and nature. The person who views the property shall note on the back of the property owner's report his name, the date he viewed the property, and his determination of any decrease in appraised value and its cause and nature.

(c) The chief appraiser shall deliver a written notice to the property owner of the determination made as provided by Subsection (b) of this section.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 134, ch. 13, § 49, eff. Jan. 1, 1982.]

#### § 22.04. Report by Bailee, Lessee, or Other Possessor

(a) When required by the chief appraiser, a person shall file a report listing the name and address of each owner of property that is in his possession or under his management on January 1 by bailment, lease, consignment, or other arrangement.

(b) When required by the chief appraiser, a person who leases or otherwise provides space to another for storage of personal property shall file an information report stating the name and address of each person to whom he leased or otherwise provided storage space on January 1.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 134, ch. 13, § 50, eff. Jan. 1, 1982.]

#### § 22.05. Rendition by Railroad

(a) In addition to other reports required by Chapter 24 of this code, a railroad corporation shall render the property the railroad corporation owns or possesses as of January 1.

(b) The rendition shall:

(1) list all real property other than the property covered by Subdivision (2) of this subsection;

(2) list the number of miles of railroad together with the market value per mile, which value shall include right-of-way, roadbed, superstructure, and all buildings and improvements used in the operation of the railroad; and

(3) list all personal property as required by Section 22.01 of this code.

[Acts 1979, 66th Leg., p. 2249, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 134, ch. 13, § 51, eff. Jan. 1, 1982.]

#### § 22.06. Rendition by Bank

A bank located in this state shall file a rendition statement listing the bank's assets and liabilities.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 22.07. Inspection of Property

(a) The chief appraiser or his authorized representative may enter the premises of a business, trade, or profession and inspect the property to determine the existence and market value of tangible personal property used for the production of income and having a taxable situs in the district.

(b) An inspection under this section must be during normal business hours or at a time mutually agreeable to the chief appraiser or his representative and the person in control of the premises.

[Acts 1981, 67th Leg., 1st C.S., p. 135, ch. 13, § 52, eff. Jan. 1, 1982.]

[Sections 22.08 to 22.20 reserved for expansion]

### SUBCHAPTER B. REQUIREMENTS AND PROCEDURES

#### § 22.21. Publicizing Requirements

Each year the director of the State Property Tax Board and each chief appraiser shall publicize in a manner reasonably designed to notify all property owners the requirements of the law relating to filing rendition statements and property reports and of the availability of forms.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 135, ch. 13, § 53, eff. Jan. 1, 1982.]

#### § 22.22. Method for Requiring Rendition or Report

The chief appraiser may require a rendition statement or property report he is authorized to require by this chapter by delivering written notice that the



statement or report is required to the person responsible for filing it. He shall attach to the notice a copy of the appropriate form.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 135, ch. 13, § 53, eff. Jan. 1, 1982.]

#### § 22.23. Filing Date

(a) Rendition statements and property reports must be delivered to the chief appraiser after January 1 and before May 1, except as provided by Section 22.02 of this code.

(b) For good cause shown the chief appraiser may extend a deadline for filing a rendition statement or property report by written order but no single extension may exceed 15 days and in no event may he extend the filing deadline beyond May 15.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 135, ch. 13, § 53, eff. Jan. 1, 1982.]

#### § 22.24. Rendition and Report Forms

(a) A person required to render property or to file a report as provided by this chapter shall use a form that substantially complies with the appropriate form prescribed or approved by the State Property Tax Board.

(b) A person filing a rendition or report shall include all information required by the form.

(c) The State Property Tax Board may prescribe or approve different forms for different kinds of property but shall ensure that each form requires a property owner to furnish the information necessary to identify the property and to determine its ownership, taxability, and situs. A form may not require a property owner to furnish information not relevant to the appraisal of property for tax purposes or to the assessment or collection of property taxes.

(d) A rendition or report form shall permit but may not require a property owner to state his opinion about the market value of his property.

[Acts 1979, 66th Leg., p. 2250, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 135, ch. 13, § 54, eff. Jan. 1, 1982.]

#### § 22.25. Place and Manner of Filing

A rendition statement or property report required or authorized by this chapter must be filed with the chief appraiser for the district in which the property listed in the statement or report is taxable.

[Acts 1979, 66th Leg., p. 2251, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 135, ch. 13, § 55, eff. Jan. 1, 1982.]

#### § 22.26. Signature

(a) Each rendition statement or property report required or authorized by this chapter must be signed by an individual who is required to file the statement or report.

(b) When a corporation is required to file a statement or report, an officer of the corporation or an employee or agent who has been designated in writing by the board of directors or by an authorized officer to sign in behalf of the corporation must sign the statement or report.

[Acts 1979, 66th Leg., p. 2251, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 22.27. Confidential Information

(a) Rendition statements and real and personal property reports filed with an appraisal office and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;

(3) to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;

(4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party;

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain.

(c) A person who legally has access to a statement or report or to other information made confidential by this section or who legally obtains the confidential information commits a Class B misdemeanor if he knowingly:

(1) permits inspection of the statement or report by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses the confidential information to a person not authorized to receive the information by Subsection (b) of this section.

[Acts 1979, 66th Leg., p. 2251, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 136, ch. 13, § 56, eff. Jan. 1, 1982.]

## CHAPTER 23. APPRAISAL METHODS AND PROCEDURES

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### SUBCHAPTER A. APPRAISALS GENERALLY

#### § 23.01. Appraisals Generally

(a) Except as otherwise provided by this chapter, all taxable property is appraised at its market value as of January 1.

(b) The market value of property shall be determined by the application of generally accepted appraisal techniques, and the same or similar appraisal techniques shall be used in appraising the same or similar kinds of property.

[Acts 1979, 66th Leg., p. 2252, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.02. Reappraisal of Property Damaged in Natural Disaster Area

(a) The governing body of a taxing unit that is located partly or entirely inside an area declared to be a natural disaster area by the governor may authorize reappraisal of all property damaged in the disaster at its market value immediately after the disaster.

(b) If a taxing unit authorizes a reappraisal pursuant to this section, the appraisal office shall complete the reappraisal as soon as practicable. The appraisal office shall include on the appraisal records, in addition to other information required or authorized by law:

- (1) the date of the disaster;
- (2) the appraised value of the property after the disaster; and

(3) if the reappraisal is not authorized by all taxing units in which the property is located, an indication of the taxing units to which the reappraisal applies.

(c) A taxing unit that authorizes a reappraisal under this section must pay the appraisal district all the costs of making the reappraisal. If two or more taxing units provide for the reappraisal in the same territory, each shall share the costs of the reappraisal in that territory in the proportion the total dollar amount of taxes imposed in that territory in the preceding year bears to the total dollar amount of taxes all units providing for reappraisal of that territory imposed in the preceding year.

(d) If property damaged in a natural disaster is reappraised as provided by this section, the governing body shall provide for prorating the taxes on the property for the year in which the disaster occurred. If the taxes are prorated, taxes due on the property are determined as follows: the taxes on the property based on its value on January 1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days before the date the disaster occurred; the taxes on the property based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the disaster occurred, remaining in the year; and the total of the two amounts is the amount of taxes on the property for the year.

(e) Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.

[Acts 1981, 67th Leg., 1st C.S., p. 136, ch. 13, § 57, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983.]

[Sections 23.03 to 23.10 reserved for expansion]

SUBCHAPTER B. SPECIAL APPRAISAL PROVISIONS

§ 23.11. Banking Corporation

(a) The stock of a banking corporation that is located in this state is appraised by subtracting the market value of the real property owned by the bank from the actual cash value of the bank's stock.

(b) Real property owned by a banking corporation subject to this section is appraised in the same manner as other real property, but a banking corporation's personal property is not subject to taxation except as provided by Section 25.15 of this code.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.12. Inventory

(a) The market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business.

(b) The chief appraiser shall establish procedures for the equitable and uniform appraisal of inventory for taxation. In conjunction with the establishment of the procedures, the chief appraiser shall:

(1) establish, publish, and adhere to one procedure for the determination of the quantity of property held in inventory without regard to the kind, nature, or character of the property comprising the inventory; and

(2) apply the same enforcement, verification, and audit procedures, techniques, and criteria to the discovery, physical examination, or quantification of all inventories without regard to the kind, nature, or character of the property comprising the inventory.

(c) In appraising an inventory, the chief appraiser shall use the information obtained pursuant to Subsection (b) of this section and shall apply generally accepted appraisal techniques in computing the market value as defined in Subsection (a) of this section.

(d) Subsections (b) and (c) of this section apply only to an inventory held for sale, lease, or rental.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 137, ch. 13, § 58, eff. Jan. 1, 1982.]

§ 23.13. Taxable Leaseholds

A taxable leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest is appraised at the market value of the leasehold or other possessory interest. However, the appraised value may not be less than the total rental paid for the interest for the current tax year.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.14. Unincorporated Bank

(a) Except as provided by Subsection (b) of this section, the real property and the tangible and intangible personal property owned by an unincorporated bank are appraised at market value.

(b) Money on hand, in transit, or on deposit and notes and accounts receivable, unpaid interest accrued, and other credits are appraised by deducting the total amount of the bank's deposit liability from the total market value of all of those items.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.15. Intangibles of an Insurance Company

Intangible property owned by an insurance company incorporated under the laws of this state is appraised as provided by Article 4.01, Insurance Code.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 23.16. Intangibles of a Savings and Loan Association

Intangible property owned by a savings and loan association is appraised as provided by Section 11.09, Texas Savings and Loan Act.<sup>1</sup>

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 852a, § 11.09.

§ 23.17. Mineral Interest Not Being Produced

An interest in a mineral that may be removed by surface mining or quarrying from a deposit and that is not being produced is appraised at the price for which the interest would sell while the mineral is in place and not being produced. The appraised value is determined by applying a per acre value to the

number of acres covered by the interest. The aggregate of the appraised value of the interest and the appraised value of all other interests that if not under separate ownership would constitute a fee simple estate in real property may not exceed the appraised value that would be placed on the fee estate if the interest in minerals were not owned separately.

[Acts 1979, 66th Leg., p. 2253, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 23.18. Property Owned by a Nonprofit Homeowners' Organization for the Benefit of Its Members**

(a) Because many residential subdivisions are developed on the basis of a nonprofit corporation or association maintaining nominal ownership to property, such as swimming pools, parks, meeting halls, parking lots, tennis courts, or other similar property, that is held for the use, benefit, and enjoyment of the members of the organization, that nominally owned property is to be appraised as provided by this section on the basis of a nominal value to avoid double taxation of the property that would result from taxation on the basis of market value of both the property of the organization and the residential units or lots of the members of the organization, whose property values are enhanced by the right to use the organization's property.

(b) All property owned by an organization that qualifies as a nonprofit homeowners' organization under this section is appraised at a nominal value as provided by this section if:

(1) the property is held for the use, benefit, and enjoyment of all members of the organization equally;

(2) each member of the organization owns an easement, license, or other nonrevokable right for the use and enjoyment on an equal basis of all property held by the organization, even if the right is subject to a restriction imposed by the instruments conveying the right or interest or granting the easement or subject to a rule, regulation, or bylaw imposed by the organization pursuant to authority granted by articles of incorporation, declaration of covenants, conditions and restrictions, bylaws, or articles of association of the organization; and

(3) each member's easement, license, or other nonrevokable right to the use and enjoyment of the property is appurtenant to and an integral part of the taxable real property owned by the member.

(c) The chief appraiser, in appraising property owned by a member of a qualified nonprofit homeowners' organization who is entitled to the use and enjoyment of facilities owned by the organization, shall consider the enhanced value of the property resulting from the member's right to the use and benefit of those facilities.

(d) An organization qualifies as a nonprofit homeowners' organization under this section if:

(1) it engages in residential real estate management;

(2) it is organized and operated to provide for the acquisition, construction, management, maintenance, and care of property nominally owned by the organization and held for the use, benefit, and enjoyment of its members;

(3) 60 percent or more of the gross income of the organization consists of amounts received as membership dues, fees, or assessments from owners of residences or residential lots within an area subject to the jurisdiction and assessment of the organization;

(4) 90 percent or more of the expenditures of the organization is made for the purpose of acquiring, constructing, managing, maintaining, and caring for the property nominally held by the organization;

(5) each member owns an easement, a license, or other nonrevokable right for the use and enjoyment on an equal basis of all property nominally owned by the organization even if the right is subject to a restriction imposed by the instruments conveying the right or interest or granting the easement or subject to a rule, regulation, or bylaw imposed by the organization pursuant to authority granted by articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or articles of association of the organization;

(6) net earnings of the organization do not inure to the benefit of any member of the organization or individual, other than by acquiring, constructing, or providing management, maintenance, and care of the organization's property or by a rebate of excess membership dues, fees, or assessments; and

(7) it qualifies for taxation under Section 1301<sup>1</sup> of the Tax Reform Act of 1976, Section 528 of the Internal Revenue Code of 1954, as amended, entitled "Certain Homeowners Associations."<sup>2</sup>

[Acts 1981, 67th Leg., 1st C.S., p. 138, ch. 13, § 59, eff. Jan. 1, 1982.]

<sup>1</sup> So in enrolled bill; probably should read "Section 2101".

<sup>2</sup> 26 U.S.C.A. § 528.

[Sections 23.19 to 23.40 reserved for expansion]

**SUBCHAPTER C. LAND DESIGNATED FOR AGRICULTURAL USE**

**§ 23.41. Appraisal**

(a) Land designated for agricultural use is appraised at its value based on the land's capacity to produce agricultural products. The value of land based on its capacity to produce agricultural products is determined by capitalizing the average net income the land would have yielded under prudent management from production of agricultural products during the five years preceding the current year. However, if the value of land as determined

by capitalization of average net income exceeds the market value of the land as determined by other generally accepted appraisal methods, the land shall be appraised by application of the other appraisal methods.

(b) The State Property Tax Board shall promulgate rules specifying the methods to apply and the procedures to use in appraising land designated for agricultural use.

(c) The board shall compile, publish, and distribute to the appraisal offices information about soil type, general topography, general weather conditions, and other factors affecting land's capacity to produce agricultural products for use in classifying agricultural land.

(d) Each year the board shall compile, publish, and distribute to appraisal offices schedules of the agricultural costs and prices for use in calculating average net income for each type of agricultural operation. The board shall use information provided by other state agencies and educational institutions, federal agencies, and other entities interested in agriculture in developing the classifications of land and the schedules.

(e) Improvements other than appurtenances to the land, the mineral estate, and all land used for residential purposes and for processing harvested agricultural products are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshaping of or additions to the soil for agricultural purposes are appurtenances to the land, and the effect of each on the value of the land for agricultural use shall be considered in appraising the land. However, the State Property Tax Board shall provide that in calculating average net income from land a deduction from income be allowed for an appurtenance subject to depreciation or depletion.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 139, ch. 13, § 60, eff. Jan. 1, 1982.]

#### § 23.42. Eligibility

(a) An individual is entitled to have land he owns designated for agricultural use if, on January 1:

(1) the land has been devoted exclusively to or developed continuously for agriculture for the three years preceding the current year;

(2) he is using and intends to use the land for agriculture as an occupation or a business venture for profit during the current year; and

(3) agriculture is his primary occupation and primary source of income.

(b) Use of land for nonagricultural purposes does not deprive an owner of his right to an agricultural designation if the nonagricultural use is secondary to and compatible with the agricultural use of the land.

(c) Agriculture is an individual's primary occupation and primary source of income if as of January 1 he devotes a greater portion of his time to and derives a greater portion of his gross income from agriculture than any other occupation. The time an individual devotes to each occupation and the gross income he derives from each is determined by averaging the time he devoted to each and the gross income he derived from each for any number of consecutive years not exceeding five years immediately preceding January 1 of the current year, that he has engaged in agriculture as an occupation. However, if he has not been engaged in agriculture as an occupation for the entire year preceding January 1, the time he has devoted to and the income he has derived from each occupation since the date he began engaging in agriculture as an occupation determine whether agriculture is his primary occupation and primary source of income.

(d) For purposes of this section:

(1) "Agriculture" means the use of land to produce plant or animal products, including fish or poultry products, under natural conditions but does not include the processing of plant or animal products after harvesting or the production of timber or forest products.

(2) "Occupation" includes employment and a business venture that requires continual supervision or management.

[Acts 1979, 66th Leg., p. 2254, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.43. Application

(a) An individual claiming the right to have his land designated for agricultural use must apply for the designation each year he claims it. Application for the designation is made by filing a sworn application form with the chief appraiser for the appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing the application by written order for a single period not to exceed 60 days.

(c) If a claimant fails to timely file a completed application form in a given year, he may not receive the agricultural designation for that year.

(d) The State Property Tax Board in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim. The board shall require that the form permit a claimant who has previously been allowed an agricultural designation to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

(e) Before February 1 the chief appraiser shall deliver an application form to each individual whose land was designated for agricultural use during the preceding year. He shall include with the application a brief explanation of the requirements for obtaining agricultural designation.

(f) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

[Acts 1979, 66th Leg., p. 2255, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 139, ch. 13, §§ 61, 62, eff. Jan. 1, 1982.]

#### § 23.431. Late Application for Agricultural Designation

(a) The chief appraiser shall accept and approve or deny an application for an agricultural designation after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If an application for agricultural designation is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference between the amount of tax imposed on the property and the amount that would be imposed without the agricultural designation.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit to which an agricultural designation allowed after a late application applies shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

[Acts 1981, 67th Leg., 1st C.S., p. 140, ch. 13, § 63, eff. Jan. 1, 1982.]

#### § 23.44. Action on Application

(a) The chief appraiser shall determine individually each claimant's right to the agricultural designation. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

- (1) approve the application and designate the land for agricultural use;
- (2) disapprove the application and request additional information from the claimant in support of the claim; or
- (3) deny the application.

(b) If the chief appraiser requests additional information from a claimant, the claimant must fur-

nish the information within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for agricultural designation filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial. The notice must include a brief explanation of the procedures for protesting the denial.

[Acts 1979, 66th Leg., p. 2255, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 140, ch. 13, § 64, eff. Jan. 1, 1982.]

#### § 23.45. Application Confidential

(a) An application for agricultural designation filed with a chief appraiser is confidential and not open to public inspection. The application and the information it contains about specific property or a specific owner may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who filed the application or to his representative authorized in writing to receive the information;
- (3) to the director of the State Property Tax Board and his employees authorized by him in writing to receive the information or to an assessor or a chief appraiser if requested in writing;
- (4) in a judicial or administrative proceeding relating to property taxation to which the person who filed the application is a party;
- (5) for statistical purposes if in a form that does not identify specific property or a specific property owner; or
- (6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain.

(c) A person who legally has access to an application for agricultural designation or who legally obtains the confidential information the application contains commits a Class B misdemeanor if he knowingly:

- (1) permits inspection of the application by a person not authorized to inspect it by Subsection (b) of this section; or

(2) discloses confidential information contained in the report to a person not authorized to receive the information by Subsection (b) of this section.

[Acts 1979, 66th Leg., p. 2256, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 141, ch. 13, § 65, eff. Jan. 1, 1982.]

§ 23.46. Additional Taxation

(a) When appraising land designated for agricultural use, the chief appraiser also shall appraise the land at its market value and shall record both the market value and the value based on its capacity to produce agricultural products in the appraisal records.

(b) Property taxes imposed on land designated for agricultural use are based on the land's agricultural use value determined as provided by Section 23.41 of this code after the appropriate assessment ratio has been applied to that value. When an assessor calculates the amount of tax due on the land, however, he shall also calculate the amount of tax that would have been imposed had the land not been designated for agricultural use. The difference in the amount of tax imposed and the amount that would have been imposed is the amount of additional tax for that year, and the assessor shall enter that amount in his tax records relating to the property.

(c) If land that has been designated for agricultural use in any year is sold or diverted to a nonagricultural use, the total amount of additional taxes for the three years preceding the year in which the land is sold or diverted plus interest at the rate provided for delinquent taxes becomes due. The assessor for each taxing unit shall prepare and deliver a statement for the additional taxes plus interest as soon as practicable after the sale or change of use occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before February 1 of the year following the year in which the sale or change of use occurs.

(d) A tax lien attaches to the land on the date the sale or change of use occurs to secure payment of the additional tax and interest imposed by Subsection (c) of this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(e) Land is not diverted to nonagricultural use for purposes of Subsection (c) of this section solely because the owner of the land claims it as part of his residence homestead for purposes of Section 11.13 of this code.

[Acts 1979, 66th Leg., p. 2256, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 141, ch. 13, § 66, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4147, ch. 652, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4824, ch. 851, § 11, eff. Aug. 29, 1983.]

[Sections 23.47 to 23.50 reserved for expansion]

SUBCHAPTER D. APPRAISAL OF AGRICULTURAL LAND

§ 23.51. Definitions

In this subchapter:

(1) "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshaping of the soil, fences, and riparian water rights.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(3) "Category" means the value classification of land considering the agricultural use to which the land is principally devoted. Categories of land include but are not limited to irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste and may be further divided according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors which influence the productive capacity of the category. The chief appraiser shall obtain information from the Texas Agricultural Extension Service, Soil Conservation Service, and other recognized agricultural sources for the purposes of determining the categories of production existing in the appraisal district.

(4) "Net to land" means the average annual net income derived from the use of open-space land that would have been earned from the land during the five-year period preceding the appraisal by an owner using ordinary prudence in the management of the land and the farm crops or livestock produced or supported on the land and, in addition, any income received from hunting or recreational leases. The chief appraiser shall calculate net to land using an owner-operator budget, subtracting all ordinary and prudent expenses incurred in pursuit of agricultural use, including all ordinary and prudent expenses incurred in connection with hunting and recreational leases and including owner labor and fixed and variable costs, from the five-year average agricultural income using estimates, including but not limited to those available from the Texas Agricultural Ex-

tension Service, U.S. Agricultural Stabilization and Conservation Service, the Soil Conservation Service, the Texas Department of Agriculture Crop and Livestock Reporting Service, and universities and colleges within this state. Only if insufficient data is available to calculate net to land on the basis of an owner-operator budget, net to land may be determined by considering the income that would be due to the owner of the land under cash lease, share lease, or whatever lease arrangement is typical in that area for that category of land, and all expenses directly attributable to the agricultural use of the land by the owner shall be subtracted from this owner income and the results shall be used in income capitalization. Net to land shall be determined by the same method for all land in the same category located in the same appraisal district. However, when net to land is calculated using an owner-operator budget and it varies by more than 50 percent from net to land calculated on the basis of the typical lease arrangement, net to land shall be adjusted to the nearest amount that varies from the typical lease amount by only 50 percent. In calculating net to land, a reasonable deduction shall be made for any depletion that occurs of underground water used in the agricultural operation.

(5) "Income capitalization" means the process of dividing net to land by the capitalization rate to determine the appraised value.

[Acts 1979, 66th Leg., p. 2257, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 142, ch. 13, § 67, eff. Jan. 1, 1982.]

#### § 23.52. Appraisal of Qualified Agricultural Land

(a) The appraised value of qualified open-space land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value as determined by other appraisal methods.

(b) The chief appraiser shall determine the appraised value according to this subchapter and, when requested by a landowner, the appraised value according to Subchapter C of this chapter<sup>1</sup> of each category of open-space land owned by that landowner and shall make each value and the market value according to the preceding year's appraisal roll available to a person seeking to apply for appraisal as provided by this subchapter or as provided by Subchapter C of this chapter.

(c) The chief appraiser may not change the appraised value of a parcel of open-space land unless the owner has applied for and the land has qualified for appraisal as provided by this subchapter or by Subchapter C of this chapter or unless the change is made as a result of a reappraisal.

(d) The State Property Tax Board by rule shall develop and distribute to each appraisal office ap-

praisal manuals setting forth this method of appraising qualified open-space land, and each appraisal office shall use the appraisal manuals in appraising qualified open-space land. The State Property Tax Board by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Subdivision (1) of Section 23.51 of this code. The rules, before taking effect, must be approved by a majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the Commissioner of the General Land Office.

(e) For the purposes of Section 23.55 of this code, the chief appraiser also shall determine the market value of qualified open-space land and shall record both the market value and the appraised value in the appraisal records.

(f) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

[Acts 1979, 66th Leg., p. 2258, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 143, ch. 13, § 68, eff. Jan. 1, 1982.]

<sup>1</sup> Section 23.41 et seq.

#### § 23.53. Capitalization Rate

The capitalization rate to be used in determining the appraised value of qualified open-space land as provided by this subchapter is 10 percent or the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year plus 2-½ percentage points, whichever percentage is greater.

[Acts 1979, 66th Leg., p. 2259, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.54. Application

(a) A person claiming that his land is eligible for appraisal under this subchapter must file a valid application with the chief appraiser.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the State Property Tax Board; and

(2) contain the information necessary to determine the validity of the claim.

(c) The State Property Tax Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The board, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

(d) The form must be filed before May 1. However, for good cause the chief appraiser may extend the filing deadline for not more than 60 days.



(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter in subsequent years without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, the chief appraiser if he has good cause to believe the land's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(f) The appraisal office shall make a sufficient number of printed application forms readily available at no charge.

(g) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

(h) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends or after a change in the category of agricultural use. If a person fails to notify the appraisal office as required by this subsection a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this subchapter and the taxes that would otherwise have been imposed.

(i) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

(j) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the 10 preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that its eligibility has ended, he shall add the difference

between the appraised value of the land under this subchapter and the market value of the land to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

[Acts 1979, 66th Leg., p. 2259, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 143, ch. 13, § 69, eff. Jan. 1, 1982.]

#### § 23.541. Late Application for Appraisal as Agricultural Land

(a) The chief appraiser shall accept and approve or deny an application for appraisal under this subchapter after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If appraisal under this subchapter is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference between the amount of tax imposed on the property and the amount that would be imposed if the property were taxed at market value.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit that taxes land based on an appraisal under this subchapter after a late application shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

[Acts 1981, 67th Leg., 1st C.S., p. 144, ch. 13, § 70, eff. Jan. 1, 1982.]

#### § 23.55. Change of Use of Land

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) The assessor shall prepare and deliver a statement for the additional taxes plus interest as soon as practicable after the change of use occurs. The taxes and interest are due and become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before February 1 of the year after the year in which the change of use occurs.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under Subchapter E of this chapter,<sup>1</sup> the sanctions provided by Subsection (a) of this section do not apply.

(h) Additional taxes, if any, for a year in which land was designated for agricultural use as provided by Subchapter C of this chapter<sup>2</sup> (or Article VIII, Section 1-d, of the constitution) are determined as provided by that subchapter, and the additional taxes imposed by this section do not apply for that year.

(i) The use of land does not change for purposes of Subsection (a) of this section solely because the owner of the land claims it as part of his residence homestead for purposes of Section 11.13 of this code.

[Acts 1979, 66th Leg., p. 2259, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 145, ch. 13, § 71, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4147, ch. 652, § 2, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4824, ch. 851, § 12, eff. Aug. 29, 1983.]

<sup>1</sup> Section 23.71 et seq.

<sup>2</sup> Section 23.41 et seq.

#### § 23.56. Land Ineligible for Appraisal as Open-Space Land

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to agricultural use continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

[Acts 1979, 66th Leg., p. 2260, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.57. Action on Applications

(a) The chief appraiser shall determine separately each applicant's right to have his land appraised under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the applicant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action and a full explanation of the reasons for denial of the application.

[Acts 1981, 67th Leg., 1st C.S., p. 145, ch. 13, § 72, eff. Jan. 1, 1982.]

[Sections 23.58 to 23.70 reserved for expansion]

### SUBCHAPTER E. APPRAISAL OF TIMBER LAND

#### § 23.71. Definitions

In this subchapter:

(1) "Category of the land" means the value classification of land for timber production, based on soil type, soil capability, general topography, weather, location, and other pertinent factors, as determined by competent governmental sources.

(2) "Net to land" means the average net income that would have been earned by a category of land over the preceding five years by a person using ordinary prudence in the management of the land and the timber produced on the land. The net income for each year is determined by multiplying the land's potential average annual growth, expressed in cords or board feet of wood, by the average stumpage value, taking into consideration the three general types of timber as produced on the four different soil types, as determined by using information from the U.S. Forest Service, U.S. Geological Survey, the Soil Conservation Service, the Texas Forest Service, and colleges and universities within this state, and by subtracting from the product reasonable management costs and other reasonable expenses directly attributable to the production of the timber.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.72. Qualification for Productivity Appraisal

Land qualifies for appraisal as provided by this subchapter if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products for five of the preceding seven years.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.73. Appraisal of Qualified Timber Land

(a) The appraised value of qualified timber land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value of the land as determined by other appraisal methods.

(b) The State Property Tax Board by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified timber land, and each appraisal office shall use the appraisal manuals in appraising qualified timber land. The State Property Tax Board by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Section 23.72 of this code. The rules, before taking effect, must be approved by majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the Commissioner of the General Land Office.

(c) For the purposes of Section 23.76 of this code, the chief appraiser also shall determine the market

value of qualified timber land and shall record both the market value and the appraised value in the appraisal records.

(d) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

[Acts 1979, 66th Leg., p. 2261, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg. 1st C.S., p. 145, ch. 13, § 73, eff. Jan. 1, 1982.]

#### § 23.74. Capitalization Rate

The capitalization rate to be used in determining the appraised value of qualified timber land as provided by this subchapter is the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year plus 2½ percentage points.

[Acts 1979, 66th Leg., p. 2262, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 23.75. Application

(a) A person claiming that his land is eligible for appraisal as provided by this subchapter must file a valid application with the chief appraiser.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the State Property Tax Board; and

(2) contain the information necessary to determine the validity of the claim.

(c) The State Property Tax Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The board, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

(d) The form must be filed before May 1. However, for good cause the chief appraiser may extend the filing deadline for not more than 60 days.

(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter in subsequent years without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, the chief appraiser if he has good cause to believe the land's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(f) The appraisal office shall make a sufficient number of printed application forms readily available at no charge.

(g) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district the requirements of this section and the availability of application forms.

(h) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends. If a person fails to notify the appraisal office as required by this subsection a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this subchapter and the taxes that would otherwise have been imposed.

(i) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

(j) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the 10 preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that its eligibility had ended, he shall add the difference between the appraised value of the land under this subchapter and the market value of the land to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

[Acts 1979, 66th Leg., p. 2262, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 146, ch. 13, § 74, eff. Jan. 1, 1982.]

#### § 23.751. Late Application for Appraisal as Timber Land

(a) The chief appraiser shall accept and approve or deny an application for appraisal under this subchapter after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If appraisal under this subchapter is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference be-

tween the amount of tax imposed on the property and the amount that would be imposed if the property were taxed at market value.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit that taxes land based on an appraisal under this subchapter after a late application shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

[Acts 1981, 67th Leg., 1st C.S., p. 147, ch. 13, § 75, eff. Jan. 1, 1982.]

#### § 23.76. Change of Use of Land

(a) If the use of land that has been appraised as provided by this subchapter changes, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land been taxed on the basis of market value in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The additional tax imposed by this section does not apply to a year for which the tax has already been imposed.

(d) If the change of use applies to only part of a parcel that has been appraised as provided by this subchapter, the additional tax applies only to that part of the parcel and equals the difference between the taxes imposed on that part of the parcel and the taxes that would have been imposed had that part been taxed on the basis of market value.

(e) The assessor shall prepare and deliver a statement for the additional taxes and interest as soon as practicable after the change of use occurs. The taxes and interest are due and become delinquent and incur penalties and interests as provided by law for ad valorem taxes imposed by the taxing unit if not paid before February 1 of the year after the year in which the change of use occurs.

(f) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs

as a result of a sale for right-of-way or a condemnation.

(g) If the use of the land changes to a use that qualifies under Subchapter C or D of this chapter,<sup>1</sup> the sanctions provided by Subsection (a) of this section do not apply.

[Acts 1979, 66th Leg., p. 2262, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 148, ch. 13, § 76, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4824, ch. 851, § 13, eff. Aug. 29, 1983.]

<sup>1</sup> Section 23.41 et seq. or 23.51 et seq.

**§ 23.77. Land Ineligible for Appraisal as Timber Land**

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to production of timber or forest products continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

[Acts 1979, 66th Leg., p. 2263, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 23.78. Minimum Taxable Value of Timber Land**

The taxable value of qualified timber land appraised as provided by this subchapter may not be less than the appraised value of that land for the taxing unit in the 1978 tax year, except that the taxable value used for any tax year may not exceed the market value of the land as determined by other generally accepted appraisal methods. If the appraised value of timber land determined as provided by this subchapter is less than a taxing unit's appraised value of that land in 1978, the assessor for the unit shall substitute the 1978 appraised value for that land on the unit's appraisal roll.

[Acts 1979, 66th Leg., p. 2263, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 148, ch. 13, § 77, eff. Jan. 1, 1982.]

**§ 23.79. Action on Applications**

(a) The chief appraiser shall determine separately each applicant's right to have his land appraised under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional information from the applicant in support of the claim; or

(3) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action.

[Acts 1981, 67th Leg., 1st C.S., p. 148, ch. 13, § 78, eff. Jan. 1, 1982.]

**SUBCHAPTER F. APPRAISAL OF RECREATIONAL, PARK, AND SCENIC LAND**

**§ 23.81. Definitions**

In this subchapter:

(1) "Recreational, park, or scenic use" means use for individual or group sporting activities, for park or camping activities, for development of historical, archaeological, or scientific sites, or for the conservation and preservation of scenic areas.

(2) "Deed restriction" means a valid and enforceable provision that limits the use of land and that is included in a written instrument filed and recorded in the deed records of the county in which the land is located.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982.]

**§ 23.82. Voluntary Restrictions**

(a) The owner of a fee simple estate in land of at least five acres may limit the use of the land to recreational, park, or scenic use by filing with the county clerk of the county in which the land is located a written instrument executed in the form and manner of a deed.

(b) The instrument must describe the land, name each owner of the land, and provide that the re-

stricted land may be used only for recreational, park, or scenic uses during the term of the deed restriction. The term of the deed restriction must be for at least 10 years, and the length of the term must be stated in the instrument.

(c) The county attorney of the county in which the restricted land is located or any person owning or having an interest in the restricted land may enforce a deed restriction that complies with the requirements of this section.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982.]

#### § 23.83. Appraisal of Restricted Land

(a) A person is entitled to have land he owns appraised under this subchapter if, on January 1:

(1) the land is restricted as provided by this subchapter;

(2) the land is used in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) the land has been devoted exclusively to recreational, park, or scenic uses for the preceding year; and

(4) he is using and intends to use the land exclusively for those purposes in the current year.

(b) The chief appraiser may not consider any factor other than one relating to the value of the land as restricted. Sales of comparable land not restricted as provided by this subchapter may not be used to determine the value of restricted land.

(c) Improvements other than appurtenances to the land and the mineral estate are appraised separately at market value. Riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshaping of or additions to the soil are appurtenances to the land and the effect of each on the value of the land for recreational, park, or scenic uses shall be considered in appraising the land.

(d) If land is appraised under this subchapter for a year, the chief appraiser shall determine at the end of that year whether the land was used exclusively for recreational, park, or scenic uses. If the land was not used exclusively for recreational, park, or scenic uses, the assessor for each taxing unit shall impose an additional tax equal to the difference in the amount of tax imposed and the amount that would have been imposed for that year if the land had not been restricted to recreational, park, or scenic uses. The assessor shall include the amount of additional tax plus interest on the next bill for taxes on the land.

(e) The State Property Tax Board shall promulgate rules specifying the methods to apply and the

procedures to use in appraising land under this subchapter.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982.]

#### § 23.84. Application

(a) A person claiming the right to have his land appraised under this subchapter must apply for the right the first year he claims it. Application for appraisal under this chapter is made by filing a sworn application form with the chief appraiser for the appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing the application by written order for a single period not to exceed 60 days.

(c) If a claimant fails to timely file a completed application form, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter during the term of the deed restriction without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, the chief appraiser, if he has good cause to believe the land's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(d) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends.

(e) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the 10 preceding years, he shall add the difference between the appraised value of the land under this subchapter and the market value of the land if it had not been restricted to recreational, park, or scenic uses to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

(f) The State Property Tax Board in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the land for which he claims appraisal under this subchapter will be used exclusively for

recreational, park, or scenic uses in the current year.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982.]

**§ 23.85. Action on Application**

(a) The chief appraiser shall determine individually each claimant's right to appraisal under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

- (1) approve the application and allow appraisal under this subchapter;
- (2) disapprove the application and request additional information from the claimant in support of the claim; or
- (3) deny the application.

(b) If the chief appraiser requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial. The notice must include a brief explanation of the procedures for protesting the denial.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982.]

**§ 23.86. Additional Taxation for Preceding Years**

(a) If land that has been appraised under this subchapter is no longer subject to a deed restriction or is diverted to a use other than recreational, park, or scenic uses, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the five years preceding the year in which the change of use occurs or the deed restriction expires that the land was appraised as provided by this subchapter and the tax that would have been imposed had the land not been restricted to recreational, park, or scenic uses in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the land on the date the change of use occurs or the deed restriction expires to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the change of use occurs or the deed restriction expires. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's taxes become delinquent that is more than 10 days after the date the statement is delivered.

(d) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4824, ch. 851, § 14, eff. Aug. 29, 1983.]

**§ 23.87. Penalty for Violating Deed Restriction**

(a) If land appraised under this subchapter is used for other than recreational, park, or scenic uses before the term of the deed restriction expires, a penalty is imposed on the land equal to the difference between the taxes imposed on the land for the year in which the violation occurs and the amount that would have been imposed for that year had the land not been restricted to recreational, park, or scenic uses.

(b) The chief appraiser shall make an entry in the appraisal records for the land against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who filed the application for appraisal under this subchapter. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty.

(c) The assessor for each taxing unit that imposed taxes on the land on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the land against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the land against which the penalty is imposed. The amount of the penalty constitutes a lien on the land against which the penalty is imposed and accrues penalties and interest in the same manner as a delinquent tax.

[Acts 1981, 67th Leg., 1st C.S., p. 149, ch. 13, § 79, eff. Jan. 1, 1982.]

[Sections 23.88 to 23.90 reserved for expansion]

**SUBCHAPTER G. APPRAISAL OF PUBLIC ACCESS AIRPORT PROPERTY**

*Acts 1981, 67th Leg., 1st C.S., p. 152, ch. 13, § 80, relettered this Subchapter, which was added as Subchapter F by Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, as Subchapter G.*

**§ 23.91. Definitions**

In this subchapter:

(1) "Airport property" means real property that is designed to be used or is used for airport purposes; including the landing, parking, shelter, or takeoff of aircraft and the accommodation of individuals engaged in the operation, maintenance, or navigation of aircraft or of aircraft passengers in connection with their use of aircraft or of airport property.

(2) "Public access airport property" means privately owned airport property that is regularly used by the public for or regularly provides services to the public in connection with airport purposes.

(3) "Deed restriction" means a valid and enforceable provision that restricts the use of property and that is included in a written instrument filed and recorded in the deed records of the county in which the property is located.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982.]

#### § 23.92. Voluntary Restrictions

(a) The owner of a fee simple estate in property of at least five acres may limit the use of that part of the property which is airport property to public access airport property by filing with the county clerk of the county in which the property is located a written instrument executed in the form and manner of a deed.

(b) The instrument must describe the property and the restricted part of the property, name each owner of the property, and provide that the restricted property may only be used as public access airport property during the term of the deed restriction. The term of the deed restriction must be for at least 10 years, and the length of the term must be stated in the instrument.

(c) The county attorney of the county in which the restricted property is located or any person owning or having an interest in the restricted property may enforce a deed restriction that complies with the requirements of this section.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982.]

#### § 23.93. Appraisal of Restricted Land

(a) A person is entitled to have airport property he owns appraised under this subchapter if, on January 1:

(1) the property is restricted as provided by this subchapter;

(2) the property has been devoted exclusively to use as public access airport property for the preceding year; and

(3) he is using and intends to use the property exclusively as public access airport property in the current year.

(b) The chief appraiser may not consider any factor other than one relating to the value of the airport property as restricted. Sales of comparable airport property not restricted as provided by this

subchapter may not be used to determine the value of restricted property.

(c) Improvements to the property that qualify as public access airport property are appraised as provided by this subchapter, but other improvements and the mineral estate are appraised separately at market value.

(d) If airport property is appraised under this subchapter for a year, the chief appraiser shall determine at the end of that year whether the property was used exclusively as public access airport property. If the airport property was not used exclusively as public access airport property, the assessor for each taxing unit shall impose an additional tax equal to the difference in the amount of tax imposed and the amount that would have been imposed for that year if the property had not been restricted to use as public access airport property. The assessor shall include the amount of additional tax plus interest on the next bill for taxes on the land.

(e) The State Property Tax Board shall promulgate rules specifying the methods to apply and the procedures to use in appraising property under this subchapter.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 152, ch. 13, § 81, eff. Jan. 1, 1982.]

#### § 23.94. Application

(a) A person claiming the right to have his airport property appraised under this subchapter must apply for the right the first year he claims it. Application for appraisal under this subchapter is made by filing a sworn application form with the chief appraiser for each appraisal district in which the land is located.

(b) A claimant must deliver a completed application form to the chief appraiser before May 1 and must furnish the information required by the form. For good cause shown the chief appraiser may extend the deadline for filing the application by written order for a single period not to exceed 60 days.

(c) If a claimant fails to timely file a completed application form, the property is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the property is eligible for appraisal under this subchapter during the term of the deed restriction without a new application unless the ownership of the property changes or its eligibility under this subchapter ends. However, the chief appraiser, if he has good cause to believe the property's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the property is currently eligible under this subchapter by delivering a written notice that a new application is required, accom-



panied by the application form, to the person who filed the application that was previously allowed.

(d) A person whose property is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the property under this subchapter ends.

(e) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the 10 preceding years, he shall add the difference between the appraised value of the property under this subchapter and the value of the property if it had not been restricted to use as public access airport property to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

(f) The State Property Tax Board in prescribing the contents of the application forms shall ensure that each form requires a claimant to furnish the information necessary to determine the validity of the claim and that the form requires the claimant to state that the airport property for which he claims appraisal under this subchapter will be used exclusively as public access airport property in the current year.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 152, ch. 13, § 82, eff. Jan. 1, 1982.]

**§ 23.95. Action on Application**

(a) The chief appraiser shall determine individually each claimant's right to appraisal under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

- (1) approve the application and allow appraisal under this subchapter;
- (2) disapprove the application and request additional information from the claimant in support of the claim; or
- (3) deny the application.

(b) If the chief appraiser requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or before April 15, whichever is earlier, or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing additional information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the claimant within five days after the date of denial.

The notice must include a brief explanation of the procedures for protesting the denial.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 153, ch. 13, § 83, eff. Jan. 1, 1982.]

**§ 23.96. Taxation for Preceding Years**

(a) If airport property that has been appraised under this subchapter is no longer subject to a deed restriction, an additional tax is imposed on the property equal to the difference between the taxes imposed on the property for each of the five years preceding the year in which the deed restriction expires that the property was appraised as provided by this subchapter and the tax that would have been imposed had the property not been restricted to use as public access airport property in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

(b) A tax lien attaches to the property on the date the deed restriction expires to secure payment of the additional tax and interest imposed by this section and any penalties incurred. The lien exists in favor of all taxing units for which the additional tax is imposed.

(c) The assessor shall prepare and deliver a statement for the additional taxes as soon as practicable after the deed restriction expires. The taxes become delinquent and incur penalties and interest as provided by law for ad valorem taxes imposed by the taxing unit if not paid before the next date on which the unit's taxes become delinquent that is more than 10 days after the date the statement is delivered.

(d) The sanctions provided by Subsection (a) of this section do not apply if the change of use occurs as a result of a sale for right-of-way or a condemnation.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4824, ch. 851, § 15, eff. Aug. 29, 1983.]

**§ 23.97. Penalty for Violating Deed Restriction**

(a) If airport property appraised under this subchapter is used as other than public access airport property before the term of the deed restriction expires, a penalty is imposed on the property equal to the difference between the taxes imposed on the property on the basis of appraisal under this subchapter for the year in which the violation occurs and the amount that would have been imposed for that year had the property not been restricted to use as public access airport property.

(b) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who filed the application for appraisal under this subchapter. The notice

shall include a brief explanation of the procedures for protesting the imposition of the penalty.

(c) The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The county assessor-collector shall add the amount of the penalty to the county's tax bill for taxes on the property. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

[Acts 1981, 67th Leg., p. 2355, ch. 581, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 154, ch. 13, § 84, eff. Jan. 1, 1982.]

## CHAPTER 24. CENTRAL APPRAISAL

### SUBCHAPTER A. TRANSPORTATION BUSINESS INTANGIBLES

#### Sec.

- 24.01. Appraisal by State Property Tax Board.
- 24.02. Property Information Report.
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- 24.04. Penalty for Failure or Refusal to Deliver Required Information.
- 24.05. Assistance from State Agencies.
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### SUBCHAPTER B. RAILROAD ROLLING STOCK

- 24.31. Appraisal at Headquarters.
- 24.32. Rolling Stock Information Reports.
- 24.33. Report of Leased Rolling Stock Forwarded.
- 24.34. Interstate Allocation.
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- 24.36. Certification to State Property Tax Board.
- 24.37. Intrastate Apportionment.
- 24.38. Certification of Apportioned Value.
- 24.39. Imposition of Tax.
- 24.40. Omitted Property.

### SUBCHAPTER A. TRANSPORTATION BUSINESS INTANGIBLES

#### § 24.01. Appraisal by State Property Tax Board

The State Property Tax Board shall appraise for taxation the intangible value of the transportation operation in this state of the following businesses:

- (1) railroads;
- (2) toll roads, toll bridges, and ferries;
- (3) motor bus carriers subject to regulation by the railroad commission;

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- (4) common or contract motor carriers subject to regulation by the railroad commission; and
- (5) oil pipelines and common carrier pipelines engaged in the transportation of oil.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 24.02. Property Information Report

(a) In addition to any reports required by Chapter 22 or Section 24.32 of this code, a person who on January 1 owns or manages and controls as a fiduciary a transportation business described by Section 24.01 of this code shall file a property information report with the board annually.

(b) The report must be on a form prescribed and furnished by the board. In prescribing the forms, the board shall ensure that each requires a taxpayer to furnish the information necessary for the board to perform its duties under this subchapter.

(c) The report must contain all the information required by the form and must be signed by the individual required to file the report by Subsection (a) of this section. When a corporation is required to file the report, an officer of the corporation or an employee or agent who has been designated in writing by the board of directors or by an authorized officer to sign in behalf of the corporation must sign the report.

(d) Reports must be filed before March 1. For good cause shown the board may extend the filing deadline by written order for a single period not to exceed 60 days.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 154, ch. 13, § 85, eff. Aug. 14, 1981.]

#### § 24.03. Additional Information

(a) If the board determines that it needs information in addition to that furnished in a transportation business's property information report, the board may require the business to supply the additional information by written notice delivered to the business by registered or certified mail, return receipt requested.

(b) A business shall furnish any additional information required as provided by Subsection (a) of this section within 15 days after the date notice is mailed. For good cause shown the board may extend the deadline for a single period not to exceed 15 days.

[Acts 1979, 66th Leg., p. 2264, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 24.04. Penalty for Failure or Refusal to Deliver Required Information

(a) If a transportation business knowingly fails or refuses to deliver a completed report in the time and manner required by Section 24.02 of this code or knowingly fails or refuses to deliver additional information in the time and manner required by Sec-

tion 24.03, the business is liable to the state for a civil penalty not exceeding \$5,000.

(b) The attorney general shall collect the penalty in a suit on the board's behalf. Venue for suit is in Travis County.

[Acts 1979, 66th Leg., p. 2265, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.05. Assistance from State Agencies

The board may call on the railroad commission or any other state entity that may have information or expertise relevant to the board's duties under this chapter for assistance in determining the amount, value, interstate allocation, and intrastate apportionment of a transportation business's property.

[Acts 1979, 66th Leg., p. 2265, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.06. Method of Appraisal

(a) To appraise the intangible value of the transportation operation in this state of a transportation business described by Section 24.01 of this code, the board shall determine the market value of the operating portion of the business as of January 1.

(b) If the business has property used in its transportation business located in another state or country or used both inside and outside this state, the board shall allocate to this state the proportion of the total market value of the business's transportation operation that fairly reflects its use in this state.

(c) The board shall deduct the market value of the business's tangible operating property located in or allocable to this state from the market value of all the transportation operation allocable to this state determined as provided by Subsection (b) of this section. The remainder is the market value of the intangibles of the business in this state.

[Acts 1979, 66th Leg., p. 2265, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.07. Intrastate Apportionment

The board shall apportion to each county in which a transportation business described by Section 24.01 of this code operates the proportion of the market value of its intangibles in this state determined as provided by Section 24.06 of this code that fairly reflects its use in the county.

[Acts 1979, 66th Leg., p. 2265, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.08. Protest Hearing

(a) After it apportions intangible values among the counties, the board shall determine the date, time, and place it will convene for a public hearing to decide protests of its appraisal, interstate allocation, or intrastate apportionment.

(b) The board shall convene a hearing to determine protests before June 15 of each year. The

board shall finally decide all protests before July 15 of each year.

(c) Section 19 and Subsections (c) through (f) of Section 16, Administrative Procedure and Texas Register Act,<sup>1</sup> do not apply to hearings under this section. The board's decision may be appealed as provided by Chapter 42 of this code.

[Acts 1979, 66th Leg., p. 2265, ch. 841, § 1, eff. Jan. 1, 1980.]

<sup>1</sup> Civil Statutes, art. 6252-13a.

§ 24.09. Notice

(a) Before May 31 of each year and at least 10 days before the date fixed for protest hearings pursuant to Section 24.08 of this code, the board shall notify each transportation business whose intangible value in this state it has appraised of the board's determination of:

- (1) the market value of the business's transportation operation;
- (2) the amount of that value allocated to this state in the case of an interstate or international business;
- (3) the market value of its tangible property located in or allocable to this state;
- (4) the market value of its intangibles in this state; and
- (5) the amount of intangible value apportioned to each county in which the business operates.

(b) The notice shall be in writing, delivered by mail, and shall include the date, time, and place the board will convene a hearing to decide protests.

[Acts 1979, 66th Leg., p. 2265, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 154, ch. 13, § 86, eff. Aug. 14, 1981.]

§ 24.10. Rules

The board shall adopt rules to implement this subchapter. The rules shall prescribe, among other matters:

- (1) the evidences of value and appraisal formulas used in appraising property under this subchapter;
- (2) the formulas applied to each kind of transportation business in making interstate allocations and intrastate apportionments;
- (3) the requirements of report forms; and
- (4) the nature of the good cause required to extend the reporting deadline.

[Acts 1979, 66th Leg., p. 2266, ch. 841, § 1, eff. Jan. 1, 1980.]

§ 24.11. Certification of Apportioned Value

Before August 1, the board shall certify to the assessor-collector for each county in which a business described by Section 24.01 of this code operates:

- (1) the name and address of each business that operates in the county; and

(2) the amount of the market value of the business's intangibles apportioned to the county.

[Acts 1979, 66th Leg., p. 2266, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, 68th Leg., p. 4825, ch. 851, § 16, eff. Aug. 29, 1983.]

#### § 24.12. Omitted Property

(a) If the board discovers that the intangible value of the transportation operation in this state of a business described by Section 24.01 of this code has not been appraised and apportioned to the counties in one of the two preceding years, the board shall appraise the property and apportion its value as of January 1 for each year it was omitted.

(b) The board shall note that the appraisal and allocation are for intangibles that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

[Acts 1979, 66th Leg., p. 2266, ch. 841, § 1, eff. Jan. 1, 1980.]

#### § 24.13. Imposition of Tax

The county assessor-collector and commissioners court may not change the apportioned values certified as provided by this subchapter. The county assessor-collector shall add each business's intangibles and the value apportioned to the county as certified to him to the appraisal roll certified to him by the chief appraiser pursuant to Section 26.01 of this code for county tax purposes. He shall calculate the county tax due on the intangible value as provided by Section 26.09 of this code.

[Acts 1979, 66th Leg., p. 2266, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 154, ch. 13, § 87, eff. Aug. 14, 1981; Acts 1983, 68th Leg., p. 4825, ch. 851, § 16, eff. Aug. 29, 1983.]

#### § 24.14. Exemption from Gross Receipts Tax

A transportation business described by Section 24.01 of this code that pays all ad valorem taxes imposed on its intangible value in full and before delinquent is not liable in that year for any occupation tax measured by gross receipts imposed by any law of this state.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980.]

[Sections 24.15 to 24.30 reserved for expansion]

### SUBCHAPTER B. RAILROAD ROLLING STOCK

#### § 24.31. Appraisal at Headquarters

The chief appraiser for the county in which the owner of rolling stock used by a railroad resides or maintains a principal place of business in this state shall appraise for taxation the rolling stock owned on January 1. However, if the owner does not reside or maintain a place of business in this state, the chief appraiser for the county in which a rail-

road that leases the rolling stock maintains its principal place of business in this state shall appraise it.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 154, ch. 13, § 88, eff. Aug. 14, 1981.]

#### § 24.32. Rolling Stock Information Reports

(a) In addition to any reports required by Chapter 22 or Section 24.02 of this code, a person who on January 1 owns or manages and controls as a fiduciary any rolling stock used in the operation of a railroad shall file a property information report listing the rolling stock with the chief appraiser for the county in which the owner maintains his principal place of business in this state.

(b) If the owner of a railroad is leasing or otherwise using rolling stock on January 1 for use in the operation of the railroad, he shall file a separate report, attached to the report required by Subsection (a) of this section, listing the rolling stock, the name and business address of the owner, and the full consideration for the lease or use.

(c) A report required by this section must be on a form prescribed by the State Property Tax Board. In prescribing the form, the board shall ensure that it requires the information necessary to determine market value of rolling stock used in this state.

(d) The report must contain all the information required by the form and must be signed by the individual required to file the report by Subsection (a) of this section. When a corporation is required to file the report, an officer of the corporation or an employee or agent who has been designated in writing by the board of directors or by an authorized officer to sign in behalf of the corporation must sign the report.

(e) A report must be filed before May 1. For good cause shown the chief appraiser may extend the filing deadline by written order for a single period not to exceed 15 days.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 154, ch. 13, § 89, eff. Aug. 14, 1981.]

#### § 24.33. Report of Leased Rolling Stock Forwarded

If the owner of leased rolling stock resides in this state or maintains a place of business in this state, the chief appraiser receiving the lessee's report required by Subsection (b) of Section 24.32 of this code shall deliver a certified copy of the report by registered or certified mail to the chief appraiser responsible for appraising the rolling stock as provided by Section 24.31 of this code.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 155, ch. 13, § 90, eff. Aug. 14, 1981.]

#### § 24.34. Interstate Allocation

(a) If the railroad operates in another state or country, the chief appraiser shall allocate to this

state the proportion of the total market value of the rolling stock that fairly reflects its use in this state during the preceding tax year.

(b) The State Property Tax Board shall adopt rules establishing formulas for interstate allocation of the value of railroad rolling stock.

[Acts 1979, 66th Leg., p. 2267, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 155, ch. 13, § 91, eff. Aug. 14, 1981.]

**§ 24.35. Notice, Review, and Protest**

(a) The chief appraiser shall deliver notice to the owner of the rolling stock as provided by Section 25.19 of this code and present the appraised value for review and protest as provided by Chapter 41 of this code.

(b) Review and protests of appraisals of railroad rolling stock must be completed by July 1 or as soon thereafter as practicable and for that reason shall be given priority.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 155, ch. 13, § 92, eff. Aug. 14, 1981.]

**§ 24.36. Certification to State Property Tax Board**

On approval of the appraised value of the rolling stock as provided by Chapter 41 of this code, the chief appraiser shall certify to the State Property Tax Board the amount of market value allocated to this state for each owner whose rolling stock is appraised in the county and the name and business address of each owner.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 155, ch. 13, § 93, eff. Aug. 14, 1981.]

**§ 24.37. Intrastate Apportionment**

The State Property Tax Board shall apportion the appraised value of each owner's rolling stock to each county in which the railroad using it operates according to the ratio the mileage of road owned by the railroad in the county bears to the total mileage of road the railroad owns in this state.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1980.]

**§ 24.38. Certification of Apportioned Value**

Before August 1, the State Property Tax Board shall certify to the county assessor-collector for each county in which a railroad operates:

- (1) the county's apportioned amount of the market value of each owner's rolling stock; and
- (2) the name and business address of each owner.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, 68th Leg., p. 4825, ch. 851, § 16, eff. Aug. 29, 1983.]

**§ 24.39. Imposition of Tax**

The county assessor-collector and commissioners court may not change the apportioned values certified as provided by this subchapter. The county assessor-collector shall add each owner's rolling stock and the value apportioned to the county as certified to him to the appraisal roll certified to him by the chief appraiser as provided by Section 26.01 of this code for county tax purposes. He shall calculate the county tax due on the rolling stock as provided by section 26.09 of this code.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 155, ch. 13, § 94, eff. Aug. 14, 1981; Acts 1983, 68th Leg., p. 4825, ch. 851, § 16, eff. Aug. 29, 1983.]

**§ 24.40. Omitted Property**

(a) If a chief appraiser discovers that rolling stock used in this state and subject to appraisal by him has not been appraised and apportioned to the counties in one of the two preceding years, he shall appraise the property as of January 1 for each year it was omitted, submit the appraisal for review and protest, and certify the approved value to the State Property Tax Board.

(b) The certification shall show that the appraisal is for property that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., 1st C.S., p. 156, ch. 13, § 95, eff. Aug. 14, 1981.]

**CHAPTER 25. LOCAL APPRAISAL**

- Sec.**
- 25.01. Preparation of Appraisal Records.
  - 25.011. Special Appraisal Records.
  - 25.02. Form and Content.
  - 25.03. Description.
  - 25.04. Separate Estates or Interests.
  - 25.05. Life Estates.
  - 25.06. Property Encumbered by Possessory or Security Interest.
  - 25.07. Leasehold and Other Possessory Interests in Exempt Property.
  - 25.08. Improvements.
  - 25.09. Condominiums and Planned Unit Developments.
  - 25.10. Standing Timber.
  - 25.11. Undivided Interests.
  - 25.12. Mineral Interest.
  - 25.13. Exempt Property Subject to Contract of Sale.
  - 25.14. Stock in Banking Corporation.
  - 25.15. Bank Personal Property Subject to Lease.
  - 25.16. Property Losing Exemption During Tax Year.
  - 25.17. Property Overlapping Taxing Unit Boundaries.
  - 25.18. Periodic Reappraisals.
  - 25.19. Notice of Appraised Value.
  - 25.195. Inspection by Property Owner.
  - 25.20. Notice to Taxing Units.
  - 25.21. Omitted Property.
  - 25.22. Submission for Review and Protest.
  - 25.23. Supplemental Appraisal Records.
  - 25.24. Appraisal Roll.
  - 25.25. Correction of Appraisal Roll.

### § 25.01. Preparation of Appraisal Records

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall prepare appraisal records listing all property that is taxable in the district and stating the appraised value of each.

(b) The chief appraiser with the approval of the board of directors of the district may contract with a private appraisal firm to perform appraisal services for the district, subject to his approval. A contract for private appraisal services is void if the amount of compensation to be paid the private appraisal firm is contingent on the amount of or increase in appraised, assessed, or taxable value of property appraised by the appraisal firm.

(c) A contract for appraisal services for an appraisal district is invalid if it does not provide that copies of the appraisal, together with supporting data, must be made available to the appraisal district and such appraisals and supporting data shall be public records. "Supporting data" shall not be construed to include personal notes, correspondence, working papers, thought processes, or any other matters of a privileged or proprietary nature.

[Acts 1979, 66th Leg., p. 2269, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 156, ch. 13, § 96, eff. Jan. 1, 1982.]

### § 25.011. Special Appraisal Records

(a) The chief appraiser for each appraisal district shall prepare and maintain a record of property specially appraised under Chapter 23 of this code and subject, in the future, to additional taxation for change in use or status.

(b) The record for each type of specially appraised property must be maintained in a separate document for each 12-month period beginning June 1. The document must include the name of at least one owner of the property, the acreage of the property, and other information sufficient to identify the property as required by the State Property Tax Board. All entries in each document must be kept in alphabetical order according to the last name of each owner whose name is part of the record.

[Acts 1981, 67th Leg., 1st C.S., p. 156, ch. 13, § 97, eff. Jan. 1, 1982.]

### § 25.02. Form and Content

(a) The appraisal records shall be in the form prescribed by the State Property Tax Board and shall include:

- (1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;
- (2) real property;
- (3) separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;
- (4) personal property;

(5) the appraised value of land and, if the land is appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,<sup>1</sup> the market value of the land;

(6) the appraised value of improvements to land;

(7) the appraised value of a separately taxable estate or interest in land;

(8) the appraised value of personal property;

(9) the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised or assessed value, and, in the case of an exemption authorized by Section 11.23 of this code, the amount of the exemption;

(10) the tax year to which the appraisal applies; and

(11) an identification of each taxing unit in which the property is taxable.

(b) A mistake in the name or address of an owner does not affect the validity of the appraisal records, of any appraisal or tax roll based on them, or of the tax imposed. The mistake may be corrected as provided by this code.

[Acts 1979, 66th Leg., p. 2270, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 157, ch. 13, § 98, eff. Jan. 1, 1982.]

<sup>1</sup> Section 23.41 et seq., 23.51 et seq., or 23.71 et seq.

### § 25.03. Description

(a) Property shall be described in the appraisal records with sufficient certainty to identify it.

(b) The State Property Tax Board may adopt rules establishing minimum standards for descriptions of property.

[Acts 1979, 66th Leg., p. 2270, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 25.04. Separate Estates or Interests

Except as otherwise provided by this chapter, when different persons own land and improvements in separate estates or interests, each separately owned estate or interest shall be listed separately in the name of the owner of each if the estate or interest is described in a duly executed and recorded instrument of title.

[Acts 1979, 66th Leg., p. 2270, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 25.05. Life Estates

Real property owned by a life tenant and remainderman shall be listed in the name of the life tenant.

[Acts 1979, 66th Leg., p. 2270, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 25.06. Property Encumbered by Possessory or Security Interest

Except as provided by Sections 25.07 and 25.15 of this code, property encumbered by a leasehold or other possessory interest or by a mortgage, deed of trust, or other interest securing payment or per-

formance of an obligation shall be listed in the name of the owner of the property so encumbered.

[Acts 1979, 66th Leg., p. 2270, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 25.07. Leasehold and Other Possessory Interests in Exempt Property

(a) Except as provided by Subsection (b) of this section, a leasehold or other possessory interest in property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year.

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

- (1) the property is permanent university fund land;
- (2) the property is county public school fund agricultural land;
- (3) the property is a part of a public transportation facility owned by an incorporated city or town and:
  - (A) is an airport passenger terminal building or a building used primarily for maintenance of aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;
  - (B) is an airport fueling system facility; or
  - (C) is in a foreign-trade zone established and operating pursuant to federal law if the area of the zone does not exceed 250 acres;
- (4) the interest is in a part of a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or
- (5) the interest involves only the right to use the property for grazing or other agricultural purposes.

[Acts 1979, 66th Leg., p. 2270, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2615, ch. 700, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 157, ch. 13, § 99, eff. Jan. 1, 1982.]

#### § 25.08. Improvements

(a) Except as provided by Subsections (b) through (d) of this section, an improvement may be listed in the name of the owner of the land on which the improvement is located.

(b) If a person who is not entitled to exemption owns an improvement on exempt land, the improvement shall be listed in the name of the owner of the improvement.

(c) When a person other than the owner of an improvement owns the land on which the improvement is located, the land and the improvement shall be listed separately in the name of the owner of each if either owner files with the chief appraiser before May 1 a written request for separate taxation on a form furnished for that purpose together

with proof of separate ownership. After an improvement qualifies for taxation separate from land, the qualification remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when ownership of the land or the improvement is transferred or either owner files a request to cancel the separate taxation.

(d) Within 30 days after an owner of land or an improvement qualifies for separate taxation or cancels a qualification, the chief appraiser shall deliver a written notice of the qualification or cancellation to the other owner.

[Acts 1979, 66th Leg., p. 2271, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 158, ch. 13, § 100, eff. Jan. 1, 1982.]

#### § 25.09. Condominiums and Planned Unit Developments

(a) A separately owned apartment or unit in a condominium as defined in the Condominium Act<sup>1</sup> shall be listed in the name of the owner of each particular apartment or unit. The value of each apartment or unit shall include the value of its fractional share in the common elements of the condominium.

(b) Property owned by a planned unit development association may be listed and taxes imposed proportionately against each member of the association if the association files with the chief appraiser before May 1 a resolution adopted by vote of a majority of all members of the association authorizing the proportionate imposition of taxes. A resolution adopted as provided by this subsection remains effective in subsequent tax years unless it is revoked by a similar resolution.

(c) If property is listed and taxes imposed proportionately as authorized by Subsection (b) of this section, the amount of tax to be imposed on the association's property shall be divided by the number of parcels of real property in the development. The quotient is the proportionate amount of tax to be imposed on each parcel, and a tax lien attaches to each parcel to secure payment of its proportionate share of the tax on the association's property.

(d) For purposes of this section, "planned unit development association" means an association that owns and maintains property in a real property development project for the benefit of its members, who are owners of individual parcels of real property in the development and are members of the association because of that ownership.

[Acts 1979, 66th Leg., p. 2271, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 158, ch. 13, § 101, eff. Jan. 1, 1982.]

<sup>1</sup> Property Code, § 81.001 et seq.

#### § 25.10. Standing Timber

(a) Except as provided by Subsections (b) and (c) of this section, standing timber may be listed to-

gether with the land on which it is located in the name of the owner of the land.

(b) If a person who is not entitled to exemption owns standing timber on exempt land, the timber shall be listed separately in the name of the owner of the timber.

(c) When a person other than the owner of standing timber owns the land on which the timber is located, the land and the timber shall be listed separately in the name of the owner of each if either owner files with the chief appraiser before May 1 a written request for separate taxation on a form furnished for that purpose together with proof of separate ownership. A qualification for separate taxation of timber expires at the end of the tax year.

(d) Within 30 days after an owner of land or timber qualifies for separate taxation, the chief appraiser shall deliver a written notice of the qualification to the other owner.

[Acts 1979, 66th Leg., p. 2272, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 158, ch. 13, § 102, eff. Jan. 1, 1982.]

#### § 25.11. Undivided Interests

(a) Except as provided by Section 25.12 of this code and by Subsection (b) of this section, a property owned in undivided interests may be listed jointly in the name of all owners of undivided interests in the property or in the name of any one or more owners.

(b) An undivided interest in a property shall be listed separately from other undivided interests in the property in the name of its owner if the interest is described in a duly executed and recorded instrument of title and the owner files with the appraisal office before May 1 a written request for separate taxation on a form furnished for that purpose together with proof of ownership and of the proportion his interest bears to the whole. After an undivided interest qualifies for separate taxation, the qualification remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when ownership is transferred or when any owner files a request to cancel separate taxation.

(c) Within 30 days after an owner qualifies for separate taxation or cancels a qualification, the chief appraiser shall deliver a written notice of the qualification or cancellation to the other owners.

[Acts 1979, 66th Leg., p. 2272, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 158, ch. 13, § 103, eff. Jan. 1, 1982.]

#### § 25.12. Mineral Interest

(a) Except as provided by Subsection (b) of this section, each separate interest in minerals in place shall be listed separately from other interests in the minerals in place in the name of the owner of the interest.

(b) Separate interests in minerals in place shall be listed jointly in the name of the operator designated with the railroad commission or the name of all owners or any combination of owners if the designated operator files with the appraisal office before May 1 a written request for joint taxation on a form furnished for that purpose. A qualification pursuant to this subsection for joint taxation remains effective in subsequent tax years and need not be requested again. However, the qualification ceases when the designated operator files a request to cancel joint taxation.

[Acts 1979, 66th Leg., p. 2272, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 159, ch. 13, § 104, eff. Jan. 1, 1982.]

#### § 25.13. Exempt Property Subject to Contract of Sale

Property that is exempt from taxation to the titleholder but is subject on January 1 to a contract of sale to a person not entitled to exemption shall be listed in the name of the purchaser.

[Acts 1979, 66th Leg., p. 2273, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 25.14. Stock in Banking Corporation

Stock in a banking corporation may be listed in the name of the bank as agent for its stockholders.

[Acts 1979, 66th Leg., p. 2273, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 25.15. Bank Personal Property Subject to Lease

Tangible personal property owned by a banking corporation that is not liable for taxes on its tangible personal property and is leased to another shall be listed in the name of the lessee.

[Acts 1979, 66th Leg., p. 2273, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 25.16. Property Losing Exemption During Tax Year

(a) If an exemption applicable to a property on January 1 terminates during the tax year, the property shall be listed in the name of the person who owns or acquires the property on the date applicability of the exemption terminates.

(b) The chief appraiser shall make an entry on the appraisal records showing that taxes on the property are to be calculated as provided by Section 26.10 of this code and showing the date on which exemption terminated.

[Acts 1979, 66th Leg., p. 2273, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 159, ch. 13, § 105, eff. Jan. 1, 1982.]

#### § 25.17. Property Overlapping Taxing Unit Boundaries

If real property is located partially outside and partially inside a taxing unit's boundaries, the por-



tion inside the unit's boundaries shall be listed separately from the remaining portion.

[Acts 1979, 66th Leg., p. 2273, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 25.18. Periodic Reappraisals

(a) Each appraisal office shall implement a plan for periodic reappraisal of property to update appraised values.

(b) The plan shall provide for reappraisal of all real property in the district at least once every four years.

(c) A taxing unit by resolution adopted by its governing body may require the appraisal office to appraise all property within the unit or to identify and appraise newly annexed territory and new improvements in the unit as of a date specified in the resolution. On or before the deadline requested by the taxing unit, which deadline may not be less than 30 days after the date the resolution is delivered to the appraisal office, the chief appraiser shall complete the appraisal and deliver to the unit an estimate of the total appraised value of property taxable by the unit as of the date specified in such resolution. The unit must pay the appraisal district for the cost of making the appraisal. The chief appraiser shall provide sufficient personnel to make the appraisals required by this subsection on or before the deadline requested by the taxing unit. An appraisal made pursuant to this subsection may not be used by a taxing unit as the basis for the imposition of taxes.

[Acts 1979, 66th Leg., p. 2273, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 159, ch. 13, § 106, eff. Jan. 1, 1982.]

Section 168(e) of the 1981 amendatory act provides:

"The amendment by this Act of Section 25.18(b), Property Tax Code, to the extent it requires periodic reappraisal of all real property in an appraisal district, does not take effect until January 1, 1984."

#### § 25.19. Notice of Appraised Value

(a) By May 15 or as soon thereafter as practicable and, in any event, not later than the 20th day before the date the appraisal review board begins considering protests under Chapter 41 of this code, the chief appraiser shall deliver a written notice to a property owner of the appraised value of his property if:

(1) the appraised value of the property is greater than it was in the preceding year;

(2) the appraised value of the property is greater than the value rendered by the property owner; or

(3) the property was not on the appraisal roll in the preceding year.

(b) The chief appraiser shall separate real from personal property and include in the notice for each:

(1) a list of the taxing units in which the property is taxable;

(2) the appraised value of the property in the preceding year;

(3) the assessed and taxable value of the property in the preceding year for each taxing unit taxing the property;

(4) the appraised value of the property for the current year and the kind and amount of each partial exemption, if any, approved for the current year;

(5) if the appraised value is greater than it was in the preceding year:

(A) the tax rate that would be announced pursuant to Section 26.04 of this code if the total values being submitted to the appraisal review board were to be approved by the board with an explanation that that rate would raise the same amount of revenue for operating purposes from property taxed in the preceding year as the unit raised for those purposes in the preceding year;

(B) the amount of tax that would be imposed on the property on the basis of the rate described by Paragraph (A) of this subdivision; and

(C) a statement that the governing body of the unit may not adopt a rate that will increase tax revenues for operating purposes from properties taxed in the preceding year without publishing notice in a newspaper that it is considering a tax increase and holding a hearing for taxpayers to discuss the tax increase;

(6) in italic typeface, the following statement: "*The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials*";

(7) a brief explanation of the time and procedure for protesting the value;

(8) the date and place the appraisal review board will begin hearing protests; and

(9) a brief explanation that:

(A) the governing body of each taxing unit decides whether or not taxes on the property will increase and the appraisal district only determines the value of the property; and

(B) a taxpayer who objects to increasing taxes and government expenditures should complain to the governing bodies of the taxing units and only complaints about value should be presented to the appraisal office and the appraisal review board.

(c) In making the preliminary calculation required by Subsection (b)(5)(A) of this section of the effective tax rate that will not increase taxes, taxes imposed by a unit in the preceding year on property not yet appraised and submitted to the appraisal review board for the current year shall be excluded.

(d) In the case of the residence homestead of a person 65 years of age or older that is subject to the limitation on a tax increase over the preceding year for school tax purposes, the chief appraiser shall

indicate on the notice that the preceding year's taxes may not be increased.

(e) On the notice, the chief appraiser shall enclose the information required by Subsections (b)(2)-(6) of this section in a printed rectangle with dimensions of not less than 15 square inches. The chief appraiser shall have the information required by Subsections (b)(2)-(5) printed in bold-faced type that is distinct from and located above the other information enclosed in the rectangle.

(f) Failure to receive the notice required by this section does not affect the validity of the appraisal of the property, the imposition of any tax on the basis of the appraisal, the existence of any tax lien, or any proceeding instituted to collect the tax.

(g) The chief appraiser, with the approval of the appraisal district board of directors, may dispense with the notice required by Subdivision (1) of Subsection (a) of this section if the amount of increase in appraised value is \$1,000 or less.

[Acts 1979, 66th Leg., p. 2274, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 159, ch. 13, §§ 107, 162, eff. Jan. 1, 1982.]

Section 162 of the 1981 amendatory act, amending subsec. (b) of this section provided, in part: "This section is contingent on adoption of the amendment of Article VIII, Section 21, Subsection (c), of the Texas Constitution, proposed by H.J.R. No. 81, Acts of the 67th Legislature, Regular Session." H.J.R. No. 81, was approved by the voters at an election held on November 3, 1981.

Section 163 of the 1981 amendatory act provides:

"Transition for Reappraisal Notices. It is the intent of the legislature that all appraisal districts comply with the provisions of Section 25.19(b), Property Tax Code, in the first year of operation under the Property Tax Code. However, the legislature recognizes that, in some districts, full compliance in that first year may be impracticable. For that reason, an appraisal district is not required to comply with Section 25.19(b)(2) and (3) or with that part of Section 25.19(b)(6) that relates to current taxes using the preceding year's tax rate in the first year the district appraises property for a taxing unit to the extent that compliance is impracticable."

#### § 25.195. Inspection by Property Owner

After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a) of this code, a property owner or his designated agent may inspect the appraisal records, together with supporting data as defined in Section 25.01(c) of this code and schedules used in making appraisals for the appraisal records, relating to property of the property owner.

[Acts 1983, 68th Leg., p. 5079, ch. 920, § 1, eff. Aug. 29, 1983.]

#### § 25.20. Notice to Taxing Units

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall submit to each taxing unit in the district a certified estimate of the total appraised value of all property in the district that is taxable by the unit.

(b) The chief appraiser shall give the assessor for a taxing unit in the district reasonable access to the appraisal records at any time.

[Acts 1979, 66th Leg., p. 2274, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 161, ch. 13, § 108, eff. Jan. 1, 1982.]

#### § 25.21. Omitted Property

(a) If the chief appraiser discovers that real property was not taxed in any one of the 10 preceding years or that personal property was not taxed in one of the two preceding years, he shall appraise the property as of January 1 of each year that it escaped taxation and enter the property and its appraised value in the appraisal records.

(b) The entry shall show that the appraisal is for property that escaped taxation in a prior year and shall indicate the year and the appraised value for each year.

[Acts 1979, 66th Leg., p. 2274, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 161, ch. 13, § 109, eff. Jan. 1, 1982.]

#### § 25.22. Submission for Review and Protest

(a) By May 15 or as soon thereafter as practicable, the chief appraiser shall submit the completed appraisal records to the appraisal review board for review and determination of protests. However, the chief appraiser may not submit the records until he has delivered the notices required by Subsection (d) of Section 11.45, Subsection (d) of Section 23.44, Subsection (d) of Section 23.57, Subsection (d) of Section 23.79, Subsection (d) of Section 23.85, Subsection (d) of Section 23.95, and Sections 25.19 and 25.20 of this code.

(b) The chief appraiser shall make and subscribe an affidavit on the submission substantially as follows:

"I, \_\_\_\_\_, (Chief Appraiser) for \_\_\_\_\_ solemnly swear that I have made or caused to be made a diligent inquiry to ascertain all property in the district subject to appraisal by me and that I have included in the records all property that I am aware of at an appraised value determined as required by law."

(c) The chief appraiser may require of his employees who are engaged in listing and appraising property an affidavit similar to his own.

[Acts 1979, 66th Leg., p. 2275, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2359, ch. 581, § 2, eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 161, ch. 13, § 110, eff. Jan. 1, 1982.]

#### § 25.23. Supplemental Appraisal Records

(a) After submission of appraisal records, the chief appraiser shall prepare supplemental appraisal records listing each taxable property he discovers that is not included in the records already submitted, including property that escaped taxation in a prior tax year, and listing property on which the

appraisal review board has not determined a protest at the time of its approval of the appraisal records.

(b) Supplemental appraisal records shall be in the form prescribed by the State Property Tax Board and shall include the items required by Section 25.02 of this code.

(c) As soon as practicable after determining the appraised value of a property listed in supplemental appraisal records, the chief appraiser shall deliver the notices required by Sections 25.19 and 25.20 of this code, if applicable, and submit the records for review and determination of protest as provided by Section 25.22 of this code.

(d) Supplemental appraisal records are subject to review and protest as provided by Chapters 41 and 42 of this code. However, a property owner must file a notice of protest within 10 days after the date the records are submitted for review, and the appraisal review board shall complete its review within 30 days after the date the records are submitted or as soon thereafter as practicable.

(e) The chief appraiser shall add supplemental appraisal records, as changed by the appraisal review board and approved by that board, to the appraisal roll for the district and certify the addition to the taxing units.

[Acts 1979, 66th Leg., p. 2275, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 162, ch. 13, § 111, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4945, ch. 884, § 2, eff. Jan. 1, 1984.]

§ 25.24. Appraisal Roll

The appraisal records, as changed by order of the appraisal review board and approved by that board, constitute the appraisal roll for the district.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 162, ch. 13, § 112, eff. Jan. 1, 1982.]

§ 25.25. Correction of Appraisal Roll

(a) Except as provided by Chapters 41 and 42 of this code and by this section, the appraisal roll may not be changed.

(b) The chief appraiser may change the appraisal roll at any time to correct a name or address, a description of property, or a clerical error that does not affect the amount of tax liability.

(c) At any time, the appraisal review board, on motion of the chief appraiser, or of a property owner may direct by written order changes in the appraisal roll to correct:

- (1) clerical errors that affect a property owner's liability for a tax; or
- (2) multiple appraisals of a property in a single tax year.

(d) The chief appraiser shall certify each change made as provided by this section to the assessor for

each unit affected by the change within five days after the date the change is entered.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 162, ch. 13, § 113, eff. Jan. 1, 1982.]

CHAPTER 26. ASSESSMENT

- Sec.
- 26.01. Submission of Rolls to Taxing Units.
- 26.011. Limitation on Application of Reappraised Values.
- 26.02. Assessment Ratios Prohibited.
- 26.03. Repealed.
- 26.04. Submission of Roll to Governing Body.
- 26.05. Tax Rate.
- 26.06. Notice, Hearing, and Vote on Tax Increase.
- 26.07. Election to Repeal Increase.
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- 26.09. Calculation of Tax.
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- 26.12. Units Created During Tax Year.
- 26.13. Taxing Unit Consolidation During Tax Year.
- 26.14. Annexation of Property During Tax Year.
- 26.15. Correction of Tax Roll.

§ 26.01. Submission of Rolls to Taxing Units

(a) By July 25, the chief appraiser shall prepare and certify to the assessor for each taxing unit participating in the district that part of the appraisal roll for the district that lists the property taxable by the unit. The part certified to the assessor is the appraisal roll for the unit. The chief appraiser shall consult with the assessor for each taxing unit and notify each unit in writing by April 1 of the form in which the roll will be provided to each unit.

(b) When a chief appraiser submits an appraisal roll for county taxes to a county assessor-collector, he also shall certify the roll to the State Property Tax Board. However, the State Property Tax Board by rule may provide for submission of only a summary of the appraisal roll. In that event, the chief appraiser shall certify the summary in the form and manner prescribed by the board's rule.

*Text of subsec. (c) as added by Acts 1983, 68th Leg., p. 4615, ch. 786, § 1*

(c) The board of directors may, at its discretion, extend the July deadline provided by Subsection (a) of this section to a date certain when it is reasonably necessary to complete the appraisal roll and shall notify each unit of the amended deadline.

*Text of subsec. (c) as added by Acts 1983, 68th Leg., p. 4946, ch. 884, § 3*

(c) The chief appraiser shall prepare and certify to the assessor for each taxing unit a listing of those properties which are taxable by that unit but which are under protest and therefore not included on the appraisal roll approved by the appraisal review board and certified by the chief appraiser. This listing shall include the appraised market val-

ue, productivity value (if applicable), and taxable value as determined by the appraisal district and shall also include the market value, taxable value, and productivity value (if applicable) as claimed by the property owner filing the protest if available. The assessor for the taxing unit shall use the lower value for calculations as prescribed in Section 26.04 of this code.

[Acts 1979, 66th Leg., p. 2276, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 162, ch. 13, § 114, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4615, ch. 786, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4826, ch. 851, § 17, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4946, ch. 884, § 3, eff. Jan. 1, 1984.]

**§ 26.011. Limitation on Application of Reappraised Values**

*Text of section added effective until January 1, 1987*

(a) If the appraised value of a property in any year from 1982 through 1985, after subtracting the appraised value of any new or previously undiscovered improvements, increases for the first time above its assessed value on a taxing unit's 1981 tax roll, the assessor for the unit shall limit the appraised value in the year of the reappraisal, if the percentage of the increase is greater than 1½ times the percentage of increase above the 1981 value of all other property on the unit's tax roll in both 1981 and the current year, to an amount that is only 1½ times greater than the percentage of increase in the value of all other property.

(b) If the appraised value submitted by the appraisal district is less than the value required to be substituted under Subsection (a) of this section, the assessor shall retain the appraised value submitted by the district instead of substituting a value pursuant to this section.

(c) A tax assessor shall limit increases in market values of land appraised as provided by Subchapters C, D, E, and F of Chapter 23 of this code<sup>1</sup> in the same manner as increases in appraised value are limited and shall substitute the limited values in the records for purposes of calculating additional taxes.

(d) To be entitled to limitation of an increase in appraised value of personal property as prescribed by this section, a person must present to the tax assessor records establishing the kinds, amounts, and values of personal property he owned on January 1, 1981, and on January 1 of the year in which the increase occurs.

(e) In this section, a new improvement is an improvement made after January 1, 1981, and a previously undiscovered improvement is an improvement that was made on or before January 1, 1981, but was not included on the taxing unit's 1981 tax roll.

(f) This section does not apply to a taxing unit unless the unit, by ordinance, order, or resolution (depending on the requirements of law for adoption of a law by that unit), provides that it applies.

(g) The State Property Tax Board shall issue rules and regulations necessary for the effective implementation of this section.

(h) This section expires January 1, 1987.

[Acts 1981, 67th Leg., 1st C.S., p. 163, ch. 13, § 115, eff. Jan. 1, 1982.]

<sup>1</sup>Sections 23.41 et seq., 23.51 et seq., 23.71 et seq., and 23.81 et seq.

**§ 26.02. Assessment Ratios Prohibited**

The assessment of property for taxation on the basis of a percentage of its appraised value is prohibited. All property shall be assessed on the basis of 100 percent of its appraised value.

[Acts 1979, 66th Leg., p. 2277, ch. 841, § 1, eff. Jan. 1, 1981. Amended by Acts 1983, 68th Leg., p. 4827, ch. 851, § 18, eff. Aug. 29, 1983.]

This section was effective January 1, 1981, under the provisions of § 3(i) of Acts 1979, 66th Leg., p. 2315, ch. 841.

**§ 26.03. Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983**

**§ 26.04. Submission of Roll to Governing Body**

(a) On receipt of the appraisal roll, the assessor for a taxing unit shall determine the total appraised value, the total assessed value, and the total taxable value of property taxable by the unit. He shall also determine, using information provided by the appraisal office, the appraised, assessed, and taxable value of property added to the appraisal roll since the preceding tax year by annexation of territory and the appraised, assessed, and taxable value of the improvements on the roll that were made after January 1 of the preceding tax year. The sum of the taxable value of annexed property and the taxable value of improvements made after January 1 of the preceding tax year is the taxable value of new property.

(b) The assessor shall submit the appraisal roll for the unit showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property to the governing body of the unit by August 1 or as soon thereafter as practicable.

(c) An officer or employee designated by the governing body shall subtract from the total amount of property taxes imposed by the unit in the preceding year:

(1) the amount of taxes imposed in the preceding year to pay principal of and interest on debt of the unit and to pay lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision;

(2) the amount of taxes imposed in the preceding year on property in territory that has ceased to be a part of the unit;

(3) the amount of taxes imposed in the preceding year on taxable value that is exempt in the current year;

(4) the amount of taxes imposed in the preceding year on taxable value that is not taxable in the current year because property appraised at market value in the preceding year is required by law to be appraised at less than market value in the current year; and

*Text of subd. (5) as added by Acts 1983, 68th Leg., p. 2165, ch. 400, § 1*

(5) the amount of taxes imposed in the preceding year pursuant to Subsection (d) of this section to recoup taxes lost in the year before as a result of an error or errors.

*Text of subd. (5) as added by Acts 1983, 68th Leg., p. 5376, ch. 987, § 3*

(5) the amount of taxes imposed in the preceding year dedicated to the use of a junior college district under Section 20.48(e), Texas Education Code.

*Text of subsec. (d) as amended by Acts 1983, 68th Leg., p. 2165, ch. 400, § 1; Acts 1983, 68th Leg., p. 5402, ch. 1001, § 1*

(d) The designated officer or employee shall calculate the tax rate that if applied to the total taxable value submitted to the governing body less the taxable value of new property would impose the amount of property taxes determined as provided by Subsection (c) of this section. He shall add to that rate the amount that, if applied to the total taxable value submitted to the governing body, will impose the amount of taxes needed to pay the principal of and interest on debt of the unit and to pay lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision. If one or more errors on the appraisal roll for the previous year were discovered after adoption of the unit's tax rate and if those errors resulted in the loss of more than one percent of the total appraised value for the unit in that year, he may also add to that rate the amount that, if applied to the total taxable value, will raise the rate calculated under this section to what it would have been if the errors had not occurred plus the amount that will recoup the amount of taxes lost in the preceding year as a result of the errors.

*Text of subsec. (d) as amended by Acts 1983, 68th Leg., p. 5376, ch. 987, § 3; Acts 1983, 68th Leg., p. 5402, ch. 1001, § 1*

(d) The designated officer or employee shall calculate the tax rate that if applied to the total taxable value submitted to the governing body less the taxable value of new property would impose the amount of property taxes determined as provided by Subsection (c) of this section. He shall add to that rate the amount that, if applied

to the total taxable value submitted to the governing body, will impose the amount of taxes needed to pay the principal of and interest on debt of the unit and to pay lawfully incurred contractual obligations providing security for the payment of principal of and interest on bonds or other evidences of indebtedness issued on behalf of the unit by another political subdivision. He shall also add to that rate the amount that, if applied to the total taxable value submitted to the governing body, would impose the amount of taxes needed for the governing body's dedication, if any, to a junior college under Section 20.48(e), Texas Education Code, for the current tax year.

(e) By August 7 or as soon thereafter as practicable, the designated officer or employee shall publish:

(1) the tax rate calculated as provided by this section and the calculations used to determine it in a manner designed to come to the attention of all owners of property in the unit and shall submit the rate to the governing body of the unit; and

(2) the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding existing debt obligation, except that for a school district, estimated funds necessary for the operation of the district prior to the receipt of the first state education aid payment in the succeeding school year shall be subtracted from the estimated fund balances.

(f) If as a result of consolidation of taxing units a taxing unit includes territory that was in two or more taxing units in the preceding year, the amount of taxes imposed in each in the preceding year is combined for purposes of calculating the tax rate under this section.

(g) In Subsections (c) and (d) of this section, "debt" means an obligation secured by property taxes of the unit and not payable from revenues budgeted for current maintenance and operating expenses, and includes bonds, warrants, certificates of indebtedness, and other lawfully authorized evidences of indebtedness issued or assumed by the unit.

[Acts 1979, 66th Leg., p. 2277, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 163, ch. 13, § 116, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 2165, ch. 400, § 1, eff. June 17, 1983; Acts 1983, 68th Leg., p. 5376, ch. 987, § 3, eff. June 19, 1983; Acts 1983, 68th Leg., p. 5402, ch. 1001, § 1, eff. Jan. 1, 1984.]

Section 30 of Acts 1983, 68th Leg., p. 5402, ch. 1001 provides:

"This Act takes effect January 1, 1984. Section 26.04, Tax Code, as amended by this Act, applies to the calculation of the tax rate for the 1984 tax year and each subsequent tax year. The tax rate for a tax year prior to 1984 is covered by the law in effect when the tax year began, and the former law is continued in effect for that purpose."

### § 26.05. Tax Rate

(a) By September 1 or as soon thereafter as practicable, the governing body of each taxing unit shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted.

(b) A taxing unit may not impose property taxes in any year until the governing body has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order, depending on the method prescribed by law for adoption of a law by the governing body. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget.

(c) The governing body may not adopt a tax rate that exceeds the tax rate calculated as provided by Section 26.04 of this code by more than three percent until it has held a public hearing on the proposed increase and has otherwise complied with Section 26.06 of this code. The governing body of a taxing unit shall reduce a tax rate set by law or by vote of the electorate to the rate calculated as provided by Section 26.04 of this code and may not adopt a higher rate unless it first complies with Section 26.06 of this code.

[Acts 1979, 66th Leg., p. 2268, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 164, ch. 13, § 117, eff. Jan. 1, 1982.]

### § 26.06. Notice, Hearing, and Vote on Tax Increase

(a) A public hearing required by Section 26.05 of this code may not be held before the seventh day after the date the notice of the public hearing on the proposed increase is given. The hearing must be on a weekday that is not a public holiday. The hearing must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. At the hearing, the governing body must afford adequate opportunity for proponents and opponents of the tax increase to present their views.

(b) The notice of a public hearing may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. The notice must be given in either of the following forms as determined by the governing body:

#### (1) "NOTICE OF PUBLIC HEARING ON TAX INCREASE"

"The (name of the taxing unit) will hold a public hearing on a proposal to increase total tax revenues from properties on the tax roll in (the preceding year) by (percentage of increase over the tax rate submitted pursuant to Section 26.04 of this code) percent. Your individual taxes may increase at a greater or lesser rate, or even decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property.

"The public hearing will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating the absences.); or

#### (2) "NOTICE OF PUBLIC HEARING ON TAX INCREASE"

"The (name of taxing unit) will hold a public hearing on a proposal to increase total property tax revenues from (the total amount of property taxes levied by the unit for the preceding year) in (the preceding year) to (the total amount of property taxes that would be levied by the unit for the current year based on the proposed tax rate) in (the year to which the proposed tax rate applies). Your individual taxes may increase at a greater or lesser rate, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property.

"The public hearing will be held on (date and time) at (meeting place).

"(Names of all members of the governing body, showing how each voted on the proposal to consider the tax increase or, if one or more were absent, indicating the absences.)"

(c) The notice may be delivered by mail to each property owner in the unit, or it may be published in a newspaper. If the notice is published in a newspaper, it may not be in the part of the paper in which legal notices and classified advertisements appear.

(d) At the public hearing the governing body shall announce the date, time, and place of the meeting at which it will vote on the proposed tax increase. After the hearing it shall give notice of the meeting at which it will vote on the tax rate and the notice shall be in the same form as prescribed by Subsections (b) and (c) of this section, except that it must be given in either of the following forms as determined by the governing body:

#### (1) "NOTICE OF VOTE ON TAX RATE"

"The (name of the taxing unit) conducted a public hearing on a proposal to increase your property taxes by (percentage of increase over the rate submitted under Section 26.04 of this code) percent on (date and time public hearing was conducted).

"A public meeting to vote on the tax rate will be held on (date and time) at (meeting place)."; or

#### (2) "NOTICE OF VOTE ON TAX RATE"

"The (name of taxing unit) conducted a public hearing on a proposal to increase your property taxes from (the total amount of property taxes levied by the unit for the preceding year) in (the preceding year) to (the total amount of property taxes that would be levied for the current year

based on the proposed tax rate) in (year to which the proposed tax rate applies).

"A public hearing to vote on the tax rate will be held on (date and time) at (meeting place)."

(e) The meeting to vote on the increase may not be earlier than the third day or later than the 14th day after the date of the public hearing. The meeting must be held inside the boundaries of the unit in a publicly owned building or, if a suitable publicly owned building is not available, in a suitable building to which the public normally has access. If the governing body does not adopt an increased rate by the 14th day, it must give a new notice under Subsection (d) of this section before it may adopt a rate that exceeds the tax rate calculated as provided by Section 26.04 of this code.

[Acts 1979, 66th Leg., p. 2278, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 164, ch. 13, § 118, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 5464, ch. 1029, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies to public notice given under Section 26.06(b) or (d), Tax Code, on or after that date."

**§ 26.07. Election to Repeal Increase**

(a) If the governing body of a taxing unit other than a school district adopts a tax rate that exceeds the rate calculated as provided by Section 26.04 of this code by more than eight percent, the qualified voters of the taxing unit by petition may require that an election be held to determine whether or not to reduce the tax rate adopted for the current year to a rate that exceeds the rate calculated as provided by Section 26.04 of this code by only eight percent.

(b) A petition is valid only if:

(1) it states that it is intended to require an election in the taxing unit on the question of reducing the tax rate for the current year;

(2) it is signed by a number of qualified voters of the taxing unit equal to at least 10 percent of the number of qualified voters of the taxing unit according to the most recent official list of qualified voters not counting the signatures of voters gathered by a person who received compensation for circulating the petition; and

(3) it is submitted to the governing body on or before the 90th day after the date on which the governing body adopted the tax rate for the current year.

(c) Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether or not the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the taxing unit on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or

disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Reducing the tax rate in (name of taxing unit) for the current year from (the rate adopted) to (the rate that is only eight percent greater than the rate calculated as provided by Section 26.04 of this code)."

(e) If a majority of the qualified voters voting on the question in the election favor the proposition, the tax rate for the taxing unit for the current year is the tax rate that is eight percent greater than the rate calculated as provided by Section 26.04 of this code; otherwise, the tax rate for the current year is the one adopted by the governing body.

(f) If the tax rate is reduced by an election called under this section after tax bills for the unit are mailed, the assessor for the unit shall prepare and mail corrected tax bills. He shall include with the bill a brief explanation of the reason for and effect of the corrected bill. The date on which the taxes become delinquent for the year is extended by a number of days equal to the number of days between the date the first tax bills were sent and the date the corrected tax bills were sent.

(g) If a property owner pays taxes calculated using the higher tax rate when the rate is reduced by an election called under this section, the taxing unit shall refund the difference between the amount of taxes paid and the amount due under the reduced rate.

[Acts 1979, 66th Leg., p. 2279, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 165, ch. 13, § 119, eff. Jan. 1, 1982.]

**§ 26.08. Election to Limit School Taxes**

(a) If the governing body of a school district adopts a rate that exceeds the rate calculated as provided by Section 26.04 of this code by more than eight percent, the qualified voters of the district by petition may require that an election be held to determine whether or not to limit the tax rate the governing body may adopt for the following year. When increased expenditure of funds by a school district is necessary to respond to a disaster, such as a tornado, hurricane, flood, or other calamity (not including a drought) which has impacted a school district and the governor has requested federal disaster assistance for the area in which the school district is located, a petition is not valid under this section to repeal a tax increase adopted the next time the district adopts a tax rate after the date the disaster occurs.

(b) A petition is valid only if:

(1) it states that it is intended to require an election in the school district on the question of limiting the tax rate for the following year;

(2) it is signed by a number of qualified voters of the school district equal to at least 10 percent

of the number of qualified voters of the district according to the most recent official list of qualified voters not counting the signatures of voters gathered by a person who received compensation for circulating the petition; and

(3) it is submitted to the governing body on or before the 90th day after the date on which the governing body adopted the tax rate for the current year.

(c) Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether or not the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the school district on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Limiting the ad valorem tax rate in (name of school district) for (the following year)."

(e) If a majority of the qualified voters voting on the question in the election favor the proposition, the governing body may not adopt a tax rate in the following year that exceeds the rate calculated as provided by Section 26.04 of this code for that year by more than eight percent, except that in making the calculation under Subsection (d) of Section 26.04 of this code, the assessor shall use the amount of taxes determined as provided by Subsection (c) of Section 26.04 of this code in the year in which the tax increase that initiated the referendum occurred rather than the year in which the calculation occurs.

(f) For purposes of this section, local tax funds dedicated to a junior college district under Section 20.48(e), Texas Education Code, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district. However, the funds dedicated to the junior college district are subject to Section 26.085 of this code.

[Acts 1979, 66th Leg., p. 2280, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 166, ch. 13, § 120, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 5377, ch. 987, § 4, eff. June 19, 1983.]

#### § 26.085. Election to Limit Dedication of School Funds to Junior College

(a) If the percentage of the total tax levy of a school district dedicated by the governing body of the school district to a junior college district under Section 20.48(e), Texas Education Code, exceeds the percentage of the total tax levy of the school district for the preceding year dedicated to the junior college district under that section, the qualified vot-

ers of the school district by petition may require that an election be held to determine whether to limit the percentage of the total tax levy dedicated to the junior college district to the same percentage as the percentage of the preceding year's total tax levy dedicated to the junior college district.

(b) A petition is valid only if:

(1) it states that it is intended to require an election on the question of limiting the amount of school district tax funds to be dedicated to the junior college district for the current year;

(2) it is signed by a number of qualified voters of the school district equal to at least 10 percent of the number of qualified voters of the school district according to the most recent official list of qualified voters, not counting the signatures of voters gathered by a person who received compensation for circulating the petition; and

(3) it is submitted to the governing body on or before the 90th day after the date on which the governing body made the dedication to the junior college district.

(c) Not later than the 20th day after the day a petition is submitted, the governing body shall determine whether the petition is valid and pass a resolution stating its finding. If the governing body fails to act within the time allowed, the petition is treated as if it had been found valid.

(d) If the governing body finds that the petition is valid (or fails to act within the time allowed), it shall order that an election be held in the school district on a date not less than 30 or more than 90 days after the last day on which it could have acted to approve or disapprove the petition. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "Limiting the portion of the (name of school district) tax levy dedicated to the (name of junior college district) for the current year to the same portion that was dedicated last year."

(e) If a majority of the qualified voters voting on the question in the election favor the proposition, the percentage of the total tax levy of the school district for the year to which the election applies dedicated to the junior college district is reduced to the same percentage of the total tax levy that was dedicated to the junior college district by the school district in the preceding year. If the proposition is approved by a majority of the qualified voters voting in an election to limit the dedication to the junior college district in a year following a year in which there was no dedication of local tax funds to the junior college district under Section 20.48(e), Texas Education Code, the school district may not dedicate any local tax funds to the junior college district in the year to which the election applies. If the proposition is not approved by a majority of the qualified voters voting in the election, the percentage of the



total tax levy dedicated to the junior college district is the percentage adopted by the governing body. [Acts 1983, 68th Leg., p. 5374, ch. 987, § 2, eff. June 19, 1983.]

**§ 26.09. Calculation of Tax**

(a) On receipt of notice of the tax rate for the current tax year, the assessor for a taxing unit other than a county shall calculate the tax imposed on each property included on the appraisal roll for the unit.

(b) The county assessor-collector shall add the properties and their values certified to him as provided by Chapter 24 of this code to the appraisal roll for county tax purposes. The county assessor-collector shall use the appraisal roll certified to him as provided by Section 26.01 with the added properties and values to calculate county taxes.

(c) The tax is calculated by:

(1) subtracting from the appraised value of a property as shown on the appraisal roll for the unit the amount of any partial exemption allowed the property owner that applies to appraised value to determine net appraised value;

(2) multiplying the net appraised value by the assessment ratio to determine assessed value;

(3) subtracting from the assessed value the amount of any partial exemption allowed the property owner to determine taxable value; and

(4) multiplying the taxable value by the tax rate.

(d) If a property is subject to taxation for a prior year in which it escaped taxation, the assessor shall calculate the tax for each year separately. In calculating the tax, he shall use the assessment ratio and tax rate in effect in the unit for the year for which back taxes are being imposed. To the amount of back taxes due, he shall add interest calculated at the rate provided by Subsection (c) of Section 33.01 of this code from the date the tax would have become delinquent had the tax been imposed in the proper tax year.

(e) The assessor shall enter the amount of tax determined as provided by this section in the appraisal roll and submit it to the governing body of the unit for approval. The appraisal roll with amounts of tax entered as approved by the governing body constitutes the unit's tax roll.

[Acts 1979, 66th Leg., p. 2281, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S. p. 166, ch. 13, § 121, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4827, ch. 851, § 19, eff. Aug. 29, 1983.]

**§ 26.10. Prorating Taxes—Loss of Exemption**

If the appraisal roll shows that a property is eligible for taxation for only part of a year because an exemption, other than a residence homestead exemption, applicable on January 1 of that year terminated during the year, the tax due against the property is calculated by multiplying the tax due for the entire year as determined as provided by Section

26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days the exemption is not applicable.

[Acts 1979, 66th Leg., p. 2282, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 5002, ch. 896, § 1, eff. Jan. 1, 1984.]

**§ 26.11. Prorating Taxes—Acquisition by Government**

(a) If the federal government, the state, or a political subdivision of the state acquires the right to possession of taxable property under a court order issued in condemnation proceedings or acquires title to taxable property, the amount of the tax due on the property is calculated by multiplying the amount of taxes imposed on the property for the entire year as determined as provided by Section 26.09 of this code by a fraction, the denominator of which is 365 and the numerator of which is the number of days that elapsed prior to the date of the conveyance or the date of the order granting the right of possession.

(b) If the amount of taxes to be imposed on the property for the year of transfer has not been determined at the time of transfer, the assessor for each taxing unit in which the property is taxable may use the taxes imposed on the property for the preceding tax year as the basis for determining the amount of taxes to be imposed for the current tax year.

(c) If the amount of prorated taxes determined to be due as provided by this section is tendered to the collector for the unit, he shall accept the tender. The payment absolves the transferor of liability for taxes by the unit on the property for the year of the transfer.

[Acts 1979, 66th Leg., p. 2282, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 26.12. Units Created During Tax Year**

(a) If a taxing unit is created after January 1, the chief appraiser shall prepare and deliver an appraisal roll for the unit as provided by Section 26.01 of this code as if the unit had existed on January 1.

(b) If the taxing unit created after January 1 imposes taxes for the year, it shall do so as provided by this chapter as if it had existed on January 1.

(c) If a taxing unit is created too late for observance of the deadlines required by this code, the chief appraiser shall submit the appraisal roll as provided by Section 26.01 of this code as soon as practicable. The assessor for the unit shall submit the appraisal roll to the governing body of the unit within five days after receipt from the appraisal office. The limitations imposed by Section 26.02 of this code do not apply to the unit in the year it is created. The governing body of the unit shall adopt an assessment ratio and a tax rate and notify the assessor as provided by Section 26.05 of this code within 20 days after receipt of the appraisal roll. The assessor shall calculate the taxes and prepare

and mail tax bills not later than 60 days after the date the appraisal office submits the unit's appraisal roll.

[Acts 1979, 66th Leg., p. 2282, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 26.13. Taxing Unit Consolidation During Tax Year

(a) If two or more taxing units consolidate into a single taxing unit after January 1, the governing body of the consolidated unit may elect to impose taxes for the current tax year either as if the unit as consolidated had existed on January 1 or as if the consolidation had not occurred.

(b) The chief appraiser shall prepare and deliver an appraisal roll for the unit or units in accordance with the election made by the governing body.

(c) Whatever the election, the assessor and collector for the unit, as consolidated shall assess and collect taxes on property that is taxable by the unit as consolidated.

[Acts 1979, 66th Leg., p. 2283, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 26.14. Annexation of Property During Tax Year

(a) Except as provided by Subsection (b) of this section, a taxing unit may not impose a tax on property annexed by the unit after January 1.

(b) If a taxing unit annexes territory during a tax year that was located in another taxing unit of like kind on January 1, each unit shall impose taxes on property located within its boundaries on the date the appraisal review board approves the appraisal roll for the district. The chief appraiser shall prepare and deliver an appraisal roll for each unit in accordance with the requirements of this subsection.

(c) For purposes of this section, "taxing units of like kind" are taxing units that are authorized by the laws by or pursuant to which they are created to perform essentially the same services.

[Acts 1979, 66th Leg., p. 2283, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 26.15. Correction of Tax Roll

(a) Except as provided by Chapters 41 and 42 of this code and in this section, the tax roll for a taxing unit may not be changed after it is completed.

(b) The assessor for a unit shall enter on the tax roll the changes made in the appraisal roll as provided by Section 25.25 of this code.

(c) At any time, the governing body of a taxing unit, on motion of the assessor for the unit or of a property owner, may direct by written order changes in the tax roll to correct errors in the mathematical computation of a tax. The assessor shall enter the corrections ordered by the governing body.

(d) Except as provided by Subsection (e) of this section, if a correction in the tax roll that changes the tax liability of a property owner is made after the tax bill is mailed, the assessor shall prepare and mail a corrected tax bill in the manner provided by Chapter 31 of this code for tax bills generally. He shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(e) If a correction that increases the tax liability of a property owner is made after the tax is paid, the assessor shall prepare and mail a supplemental tax bill in the manner provided by Chapter 31 of this code for tax bills generally. He shall include with the supplemental bill a brief explanation of the reason for and effect of the supplemental bill. The additional tax is due on receipt of the supplemental bill and becomes delinquent if not paid before the delinquency date prescribed by Chapter 31 of this code or before the first day of the next month after the date of the mailing that will provide at least 21 days for payment of the tax, whichever is later.

(f) If a correction decreases the tax liability of a property owner after he has paid the tax, the taxing unit shall refund to the property owner the difference between the tax paid and the tax legally due.

[Acts 1979, 66th Leg., p. 2283, ch. 841, § 1, eff. Jan. 1, 1982.]

Acts 1983, 68th Leg., p. 4998, ch. 894, § 1, provides:

"(a) A tax roll prepared by the tax assessor for a taxing unit before the participation of the unit in an appraisal district and approved by the board of equalization or appraisal review board for the unit may be corrected as provided by this section. A change in the tax roll that affects the tax liability of a property owner is subject to Section 26.15(d), (e), or (f), Tax Code, as applicable.

"(b) The tax assessor for the unit may change the tax roll at any time to correct a name or address, a description of property, or a clerical error that does not affect the amount of tax liability.

"(c) At any time, the governing body of the taxing unit, on motion of the tax assessor for the unit or of a property owner, may direct by written order changes in the tax roll to correct:

"(1) clerical errors that affect a property owner's liability for a tax;

"(2) the tax liability of a property owner who has qualified for a residence homestead exemption for the tax year as provided by Section 11.431, Tax Code; or

"(3) multiple appraisals of a property in a single year.

"(d) The assessor for the unit shall enter on the tax roll the changes made as provided by this section."

### SUBTITLE E. COLLECTIONS AND DELINQUENCY

#### CHAPTER 31. COLLECTIONS

##### Sec.

- 31.01. Tax Bills.
- 31.02. Delinquency Date.
- 31.03. Split Payment of Taxes.
- 31.04. Postponement of Delinquency Date.
- 31.05. Discounts.
- 31.06. Medium of Payment.
- 31.07. Certain Payments Accepted.
- 31.08. Tax Certificate.
- 31.09. Repealed.
- 31.10. Reports and Remittances of Other Taxes.

Sec.

31.11. Refunds of Overpayments or Erroneous Payments.

§ 31.01. Tax Bills

(a) Except as provided by Subsection (f) of this section, the assessor for each taxing unit shall prepare and mail a tax bill to each person in whose name the property is listed on the tax roll or to his authorized agent. The assessor shall mail tax bills by October 1 or as soon thereafter as practicable. The assessor shall mail to the state agency or institution the tax bill for any taxable property owned by the agency or institution. The agency or institution shall pay the taxes from funds appropriated for payment of the taxes or, if there are none, from funds appropriated for the administration of the agency or institution.

(b) The county assessor-collector shall mail the tax bill for Permanent University Fund land to the comptroller. The comptroller shall pay all county tax bills on Permanent University Fund land with warrants drawn on the General Revenue Fund and mailed to the county assessors-collectors before February 1.

(c) The tax bill or a separate statement accompanying the tax bill shall:

- (1) identify the property subject to the tax;
- (2) state the appraised value, assessed value, and taxable value of the property;
- (3) if the property is land appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,<sup>1</sup> state the market value and the taxable value for purposes of deferred or additional taxation as provided by Section 23.46, 23.55, or 23.76, as applicable, of this code;
- (4) state the assessment ratio for the unit;
- (5) state the type and amount of any partial exemption applicable to the property, indicating whether it applies to appraised or assessed value;
- (6) state the total tax rate for the unit;
- (7) state the amount of tax due, the due date, and the delinquency date;
- (8) explain the payment option and discounts provided by Sections 31.03 and 31.05 of this code, if available to the unit's taxpayers, and state the date on which each of the discount periods provided by Section 31.05 concludes, if the discounts are available;
- (9) state the rates of penalty and interest imposed for delinquent payment of the tax; and
- (10) include any other information required by the State Property Tax Board.

(d) Each tax bill shall also state the amount of penalty, if any, imposed pursuant to Sections 23.431, 23.54, 23.541, 23.75, 23.751, 23.87, and 23.97 of this code.

(e) An assessor may include taxes for more than one taxing unit in the same tax bill, but he shall include the information required by Subsection (c)

of this section for the tax imposed by each unit included in the bill.

(f) The governing body of a taxing unit may provide in the manner required by law for official action by the body that a tax bill not be sent until the total amount of unpaid taxes the unit collects on the property is \$5 or more. Penalties and interest do not accrue during a period when a bill is not sent because of the provisions of this section.

(g) Except as provided by Subsection (f) of this section, failure to send or receive the tax bill required by this section does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax.

[Acts 1979, 66th Leg., p. 2284, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2359, ch. 581, § 3, eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 166, ch. 13, § 122, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 15, ch. 5, § 1, eff. March 14, 1983.]

<sup>1</sup> Section 23.41 et seq., 23.51 et seq., or 23.71 et seq.

Section 3(a) of the 1983 amendatory act provides:

"This Act applies to taxes due for tax bills mailed on or after the effective date of this Act. All the discounts provided by Section 31.05, Tax Code, as amended by this Act, are effective in a taxing unit in which the discounts provided by Section 31.05, Tax Code, were in effect immediately before the effective date of this Act, as if the new discounts had been adopted by the governing body of the taxing unit or by the governing body of the taxing unit collecting its taxes."

§ 31.02. Delinquency Date

Except as provided by Sections 31.03 and 31.04 of this code, taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed.

[Acts 1979, 66th Leg., p. 2285, ch. 841, § 1, eff. Jan. 1, 1982.]

Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 166, provides:

"Municipal Delinquency Dates. The Property Tax Code does not affect the date a city's taxes for 1981 become delinquent if a city ordinance or charter provides an earlier delinquency date."

§ 31.03. Split Payment of Taxes

(a) The governing body of a taxing unit that collects its own taxes may provide, in the manner required by law for official action by the body, that a person who pays one-half of the unit's taxes before December 1 may pay the remaining one-half of the taxes without penalty or interest before July 1 of the following year.

(b) The split-payment option, if adopted, applies to taxes for all units for which the adopting taxing unit collects taxes.

(c) If one or more taxing units contract with the appraisal district for collection of taxes, the split-payment option provided by Subsection (a) of this section does not apply to taxes collected by the district unless approved by resolution adopted by a majority of the governing bodies of the taxing units whose taxes the district collects and filed with the secretary of the appraisal district board of directors.

After an appraisal district provides for the split-payment option, the option applies to all taxes collected by the district until revoked. It may be revoked in the same manner as provided for adoption.

[Acts 1979, 66th Leg., p. 2285, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 167, ch. 13, § 123, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4827, ch. 851, § 20, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4875, ch. 862, § 1, eff. Sept. 1, 1983.]

Section 4 of Acts 1983, 68th Leg., p. 4875, ch. 862 provides:

"This Act applies only to taxes for which the tax bills are mailed on or after the effective date of this Act. Taxes for which the tax bills were mailed before the effective date of this Act are covered by the law in effect when the tax bills were mailed, and the former law is continued in effect for those taxes."

#### § 31.04. Postponement of Delinquency Date

(a) If tax bills are mailed after January 10, the delinquency date provided by Section 31.02 of this code is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment of taxes before delinquent unless the taxing unit has adopted the discounts provided by Section 31.05(c) of this code, in which case the delinquency date is determined by Subsection (d) of this section.

(b) If the delinquency date is postponed as provided by this section, the assessor who mails the bills shall notify the governing body of each taxing unit whose taxes are included in the bills of the postponement.

(c) A payment option provided by Section 31.03 of this code or a discount adopted under Section 31.05(b) of this code does not apply to taxes that are calculated too late for it to be available.

(d) If a taxing unit mails its tax bills after September 30 and adopts the discounts provided by Section 31.05(c) of this code, the delinquency date is postponed to the first day of the next month following the fourth full calendar month following the date the tax bills were mailed.

(e) For purposes of this section, a taxing unit's tax bills are considered mailed on the earliest date on which the unit has mailed all or substantially all of the tax bills.

[Acts 1979, 66th Leg., p. 2285, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 16, ch. 5, § 2, eff. March 14, 1983.]

Section 3(a) of the 1983 amendatory act provides:

"This Act applies to taxes due for tax bills mailed on or after the effective date of this Act. All the discounts provided by Section 31.05, Tax Code, as amended by this Act, are effective in a taxing unit in which the discounts provided by Section 31.05, Tax Code, were in effect immediately before the effective date of this Act, as if the new discounts had been adopted by the governing body of the taxing unit or by the governing body of the taxing unit collecting its taxes."

#### § 31.05. Discounts

(a) The governing body of a taxing unit that collects its own taxes may adopt the discounts provided by Subsection (b) or Subsection (c) of this section, or both, in the manner required by law for

official action by the body. The discounts, if adopted, apply to taxes for a taxing unit for which the adopting taxing unit collects taxes if the governing body of the other unit, in the manner required by law for official action by the body, adopts the discounts or approves of their application to its taxes by the collecting unit. If a taxing unit adopts both discounts under Subsections (b) and (c) of this section, the discounts adopted under Subsection (b) apply unless the unit mails its tax bills after September 30, in which case only the discounts under Subsection (c) apply.

(b) A taxing unit may adopt the following discounts to apply regardless of the date on which it mails its tax bills:

(1) three percent if the tax is paid in October or earlier;

(2) two percent if the tax is paid in November; and

(3) one percent if the tax is paid in December.

(c) A taxing unit may adopt the following discounts to apply when it mails its tax bills after September 30:

(1) three percent if the tax is paid before or during the next full calendar month following the date on which the tax bills were mailed;

(2) two percent if the tax is paid during the second full calendar month following the date on which the tax bills were mailed; and

(3) one percent if the tax is paid during the third full calendar month following the date on which the tax bills were mailed.

(d) Repealed by Acts 1983, 68th Leg., p. 4876, ch. 862, § 3, eff. Sept. 1, 1983.

[Acts 1979, 66th Leg., p. 2285, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 167, ch. 13, § 124, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 16, ch. 5, § 2, eff. March 14, 1983; Acts 1983, 68th Leg., pp. 4875, 4876, ch. 862, §§ 2, 3, eff. Sept. 1, 1983.]

Section 3 of Acts 1983, 68th Leg., p. 16, ch. 5 provides:

"(a) This Act applies to taxes due for tax bills mailed on or after the effective date of this Act. All the discounts provided by Section 31.05, Tax Code, as amended by this Act, are effective in a taxing unit in which the discounts provided by Section 31.05, Tax Code, were in effect immediately before the effective date of this Act, as if the new discounts had been adopted by the governing body of the taxing unit or by the governing body of the taxing unit collecting its taxes."

"(b) Discounts for taxes due for tax bills mailed before the effective date of this Act are covered by the law in effect at the time the tax bills were mailed, and the former law is continued in effect for that purpose."

Section 4 of Acts 1983, 68th Leg., p. 4876, ch. 862 provides:

"This Act applies only to taxes for which the tax bills are mailed on or after the effective date of this Act. Taxes for which the tax bills were mailed before the effective date of this Act are covered by the law in effect when the tax bills were mailed, and the former law is continued in effect for those taxes."

#### § 31.06. Medium of Payment

(a) Taxes are payable only in currency of the United States. However, a collector may accept a check or money order in payment of taxes.

(b) Acceptance by a collector of a check or money order constitutes payment of a tax as of the date of acceptance if the check or money order is duly paid or honored. If the check or money order is not duly paid or honored, the collector shall deliver written notice of nonpayment to the person who attempted payment by check or money order. Until payment is made in full by cash or by a check or money order that is duly paid or honored, the lien securing payment of the tax remains in effect, whether or not the person receives notice of nonpayment.

(c) If a check or money order accepted in payment of taxes is not duly paid or honored, the amount of any charge against the taxing unit for processing the check or order is added to the amount of tax due in the same manner as penalties and interest are added for taxes that are delinquent. The tax lien on the property also secures payment of the amount of the charge.

[Acts 1979, 66th Leg., p. 2285, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 167, ch. 13, § 125, eff. Jan. 1, 1982.]

**§ 31.07. Certain Payments Accepted**

(a) A person may pay the tax imposed on any one property without simultaneously paying taxes imposed on other property he owns.

(b) A person may not pay the tax imposed on a property by a taxing unit separate from taxes imposed on that property by other taxing units using the same collector unless the tax is included in a separate bill.

[Acts 1979, 66th Leg., p. 2286, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4827, ch. 851, § 21, eff. Aug. 29, 1983.]

**§ 31.08. Tax Certificate**

(a) At the request of any person, a collector for a taxing unit shall issue a certificate showing the amount of delinquent taxes, penalties, and interest due the unit on a property according to the unit's current tax records. The collector shall charge a fee of \$4 for each certificate issued. The collector shall pay all fees collected under this section into the treasury of the taxing unit that employs him.

(b) Except as provided by Subsection (c) of this section, if a person transfers property accompanied by a tax certificate erroneously showing that no delinquent taxes, penalties, or interest are due a taxing unit on the property, the unit's tax lien on the property is extinguished and the purchaser of the property is absolved of liability to the unit for delinquent taxes, penalties, or interest on the property. The person who was liable for the tax for the year it was imposed remains personally liable for the delinquent tax, penalties, and interest.

(c) A tax certificate issued through fraud or collusion is void.

[Acts 1979, 66th Leg., p. 2286, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 662, ch. 149, § 1, eff. Sept. 1, 1983.]

**§ 31.09. Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983**

**§ 31.10. Reports and Remittances of Other Taxes**

(a) Each month the collector of taxes for a taxing unit shall prepare and submit to the governing body of the unit a written report made under oath accounting for all taxes collected for the unit during the preceding month. Reports of collections made in the months of October through January are due on the 25th day of the month following the month that is the subject of the report. Reports of collections made in all other months are due on the 15th day of the month following the month that is the subject of the report. A collector for more than one taxing unit may prepare one report accounting for taxes collected for all units, and he may submit a certified copy of the report as his monthly report to the governing body of each unit.

(b) The collector for a taxing unit shall prepare and submit to the governing body of the unit an annual report made under oath accounting for all taxes of the unit collected or delinquent on property taxed by the unit during the preceding 12-month period. Annual reports are due on the 60th day following the last day of the fiscal year.

(c) At least monthly the collector for a taxing unit shall deposit in the unit's depository all taxes collected for the unit. The governing body of a unit may require deposits to be made more frequently.

[Acts 1979, 66th Leg., p. 2286, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 5462, ch. 1027, § 1, eff. Aug. 29, 1983.]

**§ 31.11. Refunds of Overpayments or Erroneous Payments**

(a) If a taxpayer applies to the tax collector of a taxing unit for a refund of an overpayment or erroneous payment of taxes and the auditor for the unit determines that the payment was erroneous or excessive, the tax collector shall refund the amount of the excessive or erroneous payment from available current tax collections or from funds appropriated by the unit for making refunds. However, if the amount of the refund exceeds \$500, the collector may not make the refund unless the governing body of the taxing unit also determines that the payment was erroneous or excessive and approves the refund.

(b) An application for a refund must be made within three years after the date of the payment or the taxpayer waives the right to the refund.

[Acts 1981, 67th Leg., 1st C.S., p. 167, ch. 13, § 126, eff. Jan. 1, 1982.]

**CHAPTER 32. TAX LIENS AND PERSONAL LIABILITY**

**Sec.**

- 32.01. Tax Lien.
- 32.02. Restrictions on a Mineral Interest Tax Lien.
- 32.03. Restrictions on Personal Property Tax Lien.

## Sec.

32.04. Priorities Among Tax Liens.

32.05. Priority of Tax Liens Over Other Property Interests.

32.06. Transfer of Tax Lien.

32.07. Personal Liability for Tax.

## § 32.01. Tax Lien

On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on that property, whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4827, ch. 851, § 22, eff. Aug. 29, 1983.]

## § 32.02. Restrictions on a Mineral Interest Tax Lien

(a) If a mineral estate is severed from a surface estate and if different persons own the mineral estate and surface estate, the lien resulting from taxes imposed against each interest in the mineral estate exists only for the duration of the interest it encumbers. After an interest in the mineral estate terminates, the lien encumbering it expires and is not enforceable:

- (1) against any part of the surface estate not owned by the owner of the interest encumbered by the lien;
- (2) against any part of the mineral estate not owned by the owner of the interest encumbered by the lien; or
- (3) against the owner of the surface estate as a personal obligation, unless he also owns the interest encumbered by the lien.

(b) Taxes imposed on a severed interest in a mineral estate that has terminated remain the personal liability of the person who owned the interest on January 1 of the year for which the tax was imposed.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

## § 32.03. Restrictions on Personal Property Tax Lien

A tax lien may not be enforced against personal property transferred to a bona fide purchaser for value who does not have actual notice of the existence of the lien.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

## § 32.04. Priorities Among Tax Liens

(a) Whether or not a tax lien provided by this chapter takes priority over a tax lien of the United States is determined by federal law. In the absence of federal law, a tax lien provided by this chapter takes priority over a tax lien of the United States.

(b) Tax liens provided by this chapter have equal priority.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

## § 32.05. Priority of Tax Liens Over Other Property Interests

(a) A tax lien on real property takes priority over a homestead interest in the property.

(b) Except as provided by Subsection (c) of this section, a tax lien provided by this chapter takes priority over the claim of any creditor of a person whose property is encumbered by the lien and over the claim of any holder of a lien on property encumbered by the tax lien, whether or not the debt or lien existed before attachment of the tax lien.

(c) A tax lien provided by this chapter is inferior to claims for any survivor's allowance, funeral expenses, or expenses of the last illness of a decedent made against the estate of a decedent as provided by law.

[Acts 1979, 66th Leg., p. 2287, ch. 841, § 1, eff. Jan. 1, 1982.]

## § 32.06. Transfer of Tax Lien

(a) A person may authorize another person to pay the taxes imposed by a taxing unit on his real property by filing with the collector for the unit a sworn document stating the authorization, naming the person authorized to pay the taxes, and describing the property.

(b) If a person authorized to pay another's taxes pursuant to Subsection (a) of this section pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to the person paying the taxes. In addition, the collector shall certify on the sworn document that payment of the taxes and any penalties and interest on the described property has been made by a person other than the person liable for the taxes when imposed and that the taxing unit's tax lien is transferred to the person paying the taxes. The collector shall attach to the document his seal of office and deliver the document to the person paying the taxes. The collector shall keep a record of all tax liens transferred as provided by this section.

(c) Except as otherwise provided by this section, the transferee of a tax lien and any successor in interest is entitled to foreclose the lien in the manner provided by law for foreclosure of tax liens.

(d) To be enforceable, a tax lien transferred as provided by this section must be recorded in the deed records of each county in which the property encumbered by the lien is located.

(e) A person holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 10 percent a year on the taxes, penalties, interest, and recording expenses paid to acquire and record the lien.

(f) The holder of a preexisting lien on property encumbered by a tax lien transferred as provided by this section is entitled, within six months after the date on which the tax lien is recorded in all counties in which the property is located, to pay the holder of the tax lien the amount paid for the lien, plus interest accrued and recording expenses, and becomes subrogated to all rights in the lien.

(g) A suit to foreclose a tax lien transferred as provided by this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located.

(h) After one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, the holder of the lien may file suit to foreclose the lien unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides otherwise. If the suit results in foreclosure of the lien, the person filing suit is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment. The proceeds of a sale following foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

(i) The person whose property is sold as provided by this section or any person holding a first lien against the property is entitled, within one year after the date the property is sold, to redeem the property from the purchaser at the tax sale by paying him the tax sale purchase price, plus costs and interest accrued on the judgment to the date of redemption or 110 percent of the amount of the judgment, whichever is less. If a person redeems the property as provided by this subsection, the purchaser at the tax sale shall deliver a deed to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

(j) This section does not abridge the right of an owner of real property to enter into a contract for the payment of taxes with the holder of a lien on the property or affect a contract between the owner and holder of a lien for the payment of taxes on the property.

[Acts 1979, 66th Leg., p. 2288, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 32.07. Personal Liability for Tax**

(a) Except as provided by Subsection (b) of this section, property taxes are the personal obligation of the person who owns or acquires the property on January 1 of the year for which the tax is imposed.

A person is not relieved of the obligation because he no longer owns the property.

(b) The person in whose name a property is required to be listed by Section 25.13 or 25.15 of this code is personally liable for the taxes imposed on the property.

[Acts 1979, 66th Leg., p. 2289, ch. 841, § 1, eff. Jan. 1, 1980.]

**CHAPTER 33. DELINQUENCY**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec.
- 33.01. Penalties and Interest.
- 33.02. Installment Payment of Delinquent Taxes.
- 33.03. Delinquent Tax Roll.
- 33.04. Notice of Delinquency.
- 33.05. Limitation on Collection of Taxes.
- 33.06. Deferred Collection of Certain Taxes.
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**SUBCHAPTER B. SEIZURE OF PERSONAL PROPERTY**

- 33.21. Property Subject to Seizure.
- 33.22. Institution of Seizure.
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**SUBCHAPTER C. DELINQUENT TAX SUITS**

- 33.41. Suit to Collect Delinquent Tax.
- 33.42. Taxes Included in Foreclosure Suit.
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- 33.46. Partition of Real Property.
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- 33.51. Writ of Possession.
- 33.52. Judgment for Current Taxes.
- 33.53. Order of Sale.
- 33.54. Limitation on Actions Relating to Property Sold for Taxes.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 33.01. Penalties and Interest**

(a) A delinquent tax incurs a penalty of six percent of the amount of the tax for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the tax remains unpaid prior to July 1 of the year in which it becomes delinquent. However, a tax delinquent on July 1 incurs a total penalty of twelve percent of the amount of the delinquent tax without regard to the number of months the tax has been delinquent.

(b) If a person who exercises the split-payment option provided by Section 31.03 of this code fails to make the second payment before July 1, the second payment is delinquent and incurs a penalty of twelve percent of the amount of unpaid tax.

(c) A delinquent tax accrues interest at a rate of one percent for each month or portion of a month the tax remains unpaid.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 168, ch. 13, § 127, eff. Jan. 1, 1982.]

Section 159 of the 1981 amendatory act provides:

"Transition for Penalties and Interest. Penalties and interest for back taxes on property omitted from a tax roll in any year before January 1, 1982, are imposed at the rates in effect before January 1, 1982, for the period before that date and at the rate provided by the Tax Code for any period after that date. Interest on ad valorem taxes that are delinquent on January 1, 1982, accrues at the rate in effect before January 1, 1982, for the period of delinquency before January 1, 1982, and at the rate provided by the Tax Code for any period after that date."

### § 33.02. Installment Payment of Delinquent Taxes

(a) The collector for a taxing unit that collects its own taxes may enter an agreement with a person delinquent in the payment of the tax for payment of the tax, penalties, and interest in installments. The agreement must be in writing and may not extend for a period of more than 36 months.

(b) Interest accrues as provided by Subsection (c) of Section 33.01 of this code on the unpaid balance during the period of the agreement.

(c) A property owner's execution of an installment agreement under this section is an irrevocable admission of liability for all taxes, penalties, and interest that are subject to the agreement.

(d) Property may not be seized and sold and a suit may not be filed to collect a delinquent tax subject to an installment agreement unless the property owner:

- (1) fails to make a payment as required by the agreement;
- (2) fails to pay other property taxes collected by the unit when due as required by the collector; or
- (3) breaches any other condition of the agreement.

(e) Execution of an installment agreement tolls the limitation periods provided by Section 33.05 of this code for the period during which enforced collection is barred by Subsection (d) of this section.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 33.03. Delinquent Tax Roll

Each year the collector for each taxing unit shall prepare a current and a cumulative delinquent tax roll for the unit.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 33.04. Notice of Delinquency

(a) At least once each year the collector for a taxing unit shall deliver a notice of delinquency to each person whose name appears on the current delinquent tax roll. However, the notice need not

be delivered if a bill for the tax was not mailed pursuant to the authorization provided by Subsection (f) of Section 31.01 of this code.

(b) In addition to the notice required by Subsection (a) of this section, the tax collector for each taxing unit in each year divisible by five shall deliver a written notice of delinquency to each person who owes a tax that has been delinquent more than one year. He shall state in the notice the amount of the delinquent tax, penalties, and interest due, the description of the property on which the tax was imposed, and the year for which the tax is delinquent. If the person owes delinquent taxes for more than one year or on more than one property, the collector may include all the delinquent taxes the person owes in a single notice.

(c) The collector shall deliver the notice required by Subsection (b) of this section by mail if the collector knows or by exercising reasonable diligence can determine the delinquent taxpayer's name and mailing address. However, if the collector cannot determine the delinquent taxpayer's name or mailing address by exercising reasonable diligence, he may deliver the notice by publishing it in a newspaper.

(d) Penalties and interest on a tax delinquent more than five years or a multiple of five years are cancelled and may not be collected if the collector has not delivered the notice required by Subsection (b) of this section in each year that is divisible by five following the date on which the tax first became delinquent for one year.

[Acts 1979, 66th Leg., p. 2290, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 168, ch. 13, § 128, eff. Jan. 1, 1982.]

### § 33.05. Limitation on Collection of Taxes

(a) Personal property may not be seized and a suit may not be filed:

- (1) to collect a tax on personal property that has been delinquent more than four years; or
- (2) to collect a tax on real property that has been delinquent more than 20 years.

(b) A tax delinquent for more than the limitation period prescribed by this section and any penalty and interest on the tax is presumed paid unless a suit to collect the tax is pending.

[Acts 1979, 66th Leg., p. 2291, ch. 841, § 1, eff. Jan. 1, 1982.]

### § 33.06. Deferred Collection of Certain Taxes

(a) An individual is entitled to defer or abate a suit to collect a delinquent tax if he is 65 or older and he owns and occupies as a residence homestead the property on which the tax subject to the suit is delinquent.

(b) To obtain a deferral, an individual must file with the chief appraiser for the appraisal district in which the property is located an affidavit stating the facts required to be established by Subsection



(a) of this section. The chief appraiser shall notify each taxing unit participating in the district of the filing. After an affidavit is filed under this subsection, a taxing unit may not file suit to collect delinquent taxes on the property until the individual no longer owns and occupies the property as a residence homestead.

(c) To obtain an abatement, the individual must file in the court in which suit is pending an affidavit stating the facts required to be established by Subsection (a) of this section. If no controverting affidavit is filed by the taxing unit filing suit or if, after a hearing, the court finds the individual is entitled to the deferral, the court shall abate the suit until the individual no longer owns and occupies the property as a residence homestead.

(d) A tax lien remains on the property and penalties and interest continue to accrue during the period collection of taxes is deferred as provided by this section. A plea of limitation, laches, or want of prosecution does not apply against the taxing unit because of deferral of collection as provided by this section.

(e) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the district or county the provisions of this section and, specifically, the method by which eligible persons may obtain a deferral.

[Acts 1979, 66th Leg., p. 2291, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 168, ch. 13, § 129, eff. Jan. 1, 1982.]

**§ 33.07. Additional Penalty for Collection Costs**

(a) A taxing unit or appraisal district may provide, in the manner required by law for official action by the body, that taxes that remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with an attorney pursuant to Section 6.30 of this code. The amount of the penalty may not exceed 15 percent of the amount of taxes, penalty, and interest due.

(b) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(c) If a penalty is imposed pursuant to this section, a taxing unit may not recover attorney's fees in a suit to collect delinquent taxes subject to the penalty.

(d) If a taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver a notice of delinquency and of the penalty to the property owner at least 30 and not more than 60 days before July 1.

[Acts 1981, 67th Leg., 1st C.S., p. 168, ch. 13, § 130, eff. Jan. 1, 1982.]

[Sections 33.08 to 33.20 reserved for expansion]

**SUBCHAPTER B. SEIZURE OF PERSONAL PROPERTY**

**§ 33.21. Property Subject to Seizure**

(a) A person's personal property is subject to seizure for the payment of a delinquent tax, penalty, and interest he owes a taxing unit on property.

(b) A person's personal property is subject to seizure for the payment of a tax imposed by a taxing unit on his property before the tax becomes delinquent if:

(1) the collector discovers that property on which the tax has been or will be imposed is about to be removed from the county; and

(2) the collector knows of no other personal property in the county from which the tax may be satisfied.

(c) Current wages in the possession of an employer are not subject to seizure.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4828, ch. 851, § 23, eff. Aug. 29, 1983.]

**§ 33.22. Institution of Seizure**

(a) At any time after a tax becomes delinquent, a collector may apply for a tax warrant to any court in any county in which the person liable for the tax has personal property. If more than one collector participates in the seizure, all may make a joint application.

(b) A collector may apply at any time for a tax warrant authorizing seizure of property as provided by Subsection (b) of Section 33.21 of this code.

(c) The court shall issue the tax warrant if the applicant shows by affidavit that:

(1) the person whose property he intends to seize is delinquent in the payment of taxes, penalties, and interest in the amount stated in the application; or

(2) the applicant has reason to believe the property owner is about to remove from the county personal property on which a tax has been or will be imposed, the applicant knows of no other personal property the person owns in the county from which the tax may be satisfied, and taxes in a stated amount have been imposed on the property or taxes in an estimated amount will be imposed on the property.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 33.23. Tax Warrant**

(a) A tax warrant shall direct a peace officer in the county and the collector to seize as much of the person's personal property as may be reasonably necessary for the payment of all taxes, penalties, and interest included in the application and all costs of seizure and sale. The warrant shall direct the

person whose property is seized to disclose to the officer executing the warrant the name and the address if known of any other person having an interest in the property.

(b) A bond may not be required of a taxing unit for issuance or delivery of a tax warrant, and a fee or court cost may not be charged for issuance or delivery of a warrant.

(c) After a tax warrant is issued, the collector shall take possession of the property pending its sale. The person against whom a tax warrant is issued or another person having possession of property of the person against whom a tax warrant is issued shall surrender the property on demand.

[Acts 1979, 66th Leg., p. 2292, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4828, ch. 851, § 24, eff. Aug. 29, 1983.]

#### § 33.24. Bond for Payment of Taxes

A person may prevent seizure of property or sale of property seized by delivering to the collector a cash or surety bond conditioned on payment of the tax before delinquency. The bond must be approved by the collector in an amount determined by him, but he may not require an amount greater than the amount of tax if imposed or the collector's reasonable estimate of the amount of tax if not yet imposed.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.25. Notice of Tax Sale

(a) After a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and address of any person having an interest in the property other than the person against whom the tax warrant is issued. He shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person he discovers has an interest in the property whose address he ascertains.

(b) Failure to send or receive the notice provided by this section does not affect the validity of the sale or title to the seized property.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 33.26 to 33.40 reserved for expansion]

### SUBCHAPTER C. DELINQUENT TAX SUITS

#### § 33.41. Suit to Collect Delinquent Tax

(a) At any time after its tax on property becomes delinquent, a taxing unit may file suit to foreclose the lien securing payment of the tax, to enforce personal liability for the tax, or both. The suit must be in a court of competent jurisdiction for the county in which the tax was imposed.

(b) A suit to collect a delinquent tax takes precedence over all other suits pending in appellate courts.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2644, ch. 707, § 4(33), eff. Aug. 31, 1981.]

#### § 33.42. Taxes Included in Foreclosure Suit

(a) In a suit to foreclose a lien securing payment of its tax on real property, a taxing unit shall include all delinquent taxes due the unit on the property.

(b) If a taxing unit's tax on real property becomes delinquent after the unit files suit to foreclose a tax lien on the property but before entry of judgment, the court shall include the amount of the tax and any penalty and interest in its judgment.

(c) If a tax required by this section to be included in a suit is omitted from the judgment in the suit, the taxing unit may not enforce collection of the tax at a later time.

[Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.43. Petition

(a) A petition initiating a suit to collect a delinquent property tax is sufficient if it alleges that:

(1) the taxing unit is legally constituted and authorized to impose and collect ad valorem taxes on property;

(2) tax in a stated amount was legally imposed on each separately described property for each year specified and on each person named if known who owned the property on January 1 of the year for which the tax was imposed;

(3) the tax was imposed in the county in which the suit is filed;

(4) the tax is delinquent;

(5) penalties, interest, and costs authorized by law in a stated amount for each separately assessed property are due;

(6) the person sued owned the property on January 1 of the year for which the tax was imposed if the suit seeks to enforce personal liability;

(7) the person sued owns the property when the suit is filed if the suit seeks to foreclose a tax lien;

(8) the taxing unit asserts a lien on each separately described property to secure the payment of all taxes, penalties, interest, and costs due if the suit seeks to foreclose a tax lien;

(9) all things required by law to be done have been done properly by the appropriate officials; and

(10) the attorney signing the petition is legally authorized to prosecute the suit on behalf of the taxing unit.

(b) If the petition alleges that the person sued owns the property on which the taxing unit asserts a lien, the prayer in the petition shall be for foreclo-

sure of the lien and payment of all taxes, penalties, interest, and costs that are due or will become due and that are secured by the lien. If the petition alleges that the person sued owned the property on January 1 of the year for which the taxes were imposed, the prayer shall be for personal judgment for all taxes, penalties, interest, and costs that are due or will become due on the property. If the petition contains the appropriate allegations, the prayer may be for both foreclosure of a lien on the property and personal judgment.

(c) If the suit is for personal judgment against the person who owned personal property on January 1 of the year for which the tax was imposed on the property, the personal property may be described generally.

(d) The petition need not be verified.

(e) The State Property Tax Board shall prepare forms for petitions initiating suits to collect delinquent taxes. An attorney representing a taxing unit may use the forms or develop his own form. [Acts 1979, 66th Leg., p. 2293, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.44. Joinder of Other Taxing Units

(a) A taxing unit filing suit to foreclose a tax lien on real property shall join other taxing units that have claims for delinquent taxes against all or part of the same property.

(b) For purposes of joining a county, citation may be served on the county tax assessor-collector. For purposes of joining any other taxing unit, citation may be served on the officer charged with collecting taxes for the unit or on the presiding officer or secretary of the governing body of the unit. Citation may be served by certified mail, return receipt requested. A person on whom service is authorized by this subsection may waive the issuance and service of citation in behalf of his taxing unit.

(c) A taxing unit joined in a suit as provided by this section must file its claim for delinquent taxes against the property or its lien on the property is extinguished. The court's judgment in the suit shall reflect the extinguishment of a lien under this subsection.

[Acts 1979, 66th Leg., p. 2294, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4828, ch. 851, § 25, eff. Aug. 29, 1983.]

#### § 33.45. Pleading and Answering to Claims Filed

A party to the suit must take notice of and plead and answer to all claims and pleadings filed by other parties that have been joined or have intervened, and each citation must so state.

[Acts 1979, 66th Leg., p. 2294, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.46. Partition of Real Property

(a) If suit is filed to foreclose a tax lien on real property owned in undivided interests by two or

more persons, one or more of the owners may have the property partitioned in the manner prescribed by law for the partition of real property in district court.

(b) The court shall apportion the taxes, penalties, interest, and costs sued for to the owners of the property in proportion to the interest of each. If an owner pays the taxes, penalties, interest, and costs apportioned to him, the property partitioned to him is free from further claim or lien for the taxes involved in the suit. If an owner refuses to pay the amount apportioned to him, the suit shall proceed against him for that amount.

(c) The court shall allow reasonable attorney's fees and costs of partitioning for each property partitioned. The fee shall be taxed as costs against each owner in proportion to his interest and constitutes a lien against the property until paid.

[Acts 1979, 66th Leg., p. 2294, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.47. Tax Records as Evidence

(a) In a suit to collect a delinquent tax, the taxing unit's current tax roll and delinquent tax roll or certified copies of the entries showing the property and the amount of the tax imposed constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements of law and that the amount of tax alleged to be delinquent against the property listed is the correct amount.

(b) If the description of a property in the tax roll or delinquent tax roll is insufficient to identify the property, the records of the appraisal office are admissible to identify the property.

[Acts 1979, 66th Leg., p. 2295, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.48. Recovery of Costs and Expenses

(a) In addition to other costs authorized by law, a taxing unit is entitled to recover the following costs and expenses in a suit to collect a delinquent tax:

- (1) all usual court costs, including the cost of serving process;
- (2) expenses of foreclosure sale;
- (3) reasonable expenses, subject to approval by the court, that are incurred by the taxing unit in determining the name, identity, and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due; and
- (4) reasonable attorney's fees approved by the court and not exceeding 15 percent of the total amount of taxes, penalties, and interest adjudged due the unit.

(b) Each item specified by Subsection (a) of this section is a charge against the property subject to foreclosure in the suit and shall be collected out of the proceeds of the sale of the property or, if the

suit is for personal judgment, charged against the defendant.

(c) Fees collected for attorneys and other officials are fees of office, except that fees for contract attorneys representing a taxing unit that is joined or intervenes shall be applied toward the compensation due the attorney under the contract.

[Acts 1979, 66th Leg., p. 2295, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 169, ch. 13, § 131, eff. Jan. 1, 1982.]

#### § 33.49. Liability of Taxing Unit for Costs

(a) Except as provided by Subsection (b) of this section, a taxing unit is not liable in a suit to collect taxes for court costs, including any fees for service of process, and may not be required to post security for the costs.

(b) A taxing unit shall pay the cost of publishing citations, notices of sale, or other notices from the unit's general fund as soon as practicable after receipt of the publisher's claim for payment. The taxing unit is entitled to reimbursement from other taxing units that are parties to the suit for their proportionate share of the publication costs on satisfaction of any portion of the tax indebtedness before further distribution of the proceeds. A taxing unit may not pay a word or line rate for publication of citation or other required notice that exceeds the rate the newspaper publishing the notice charges private entities for similar classes of advertising. [Acts 1979, 66th Leg., p. 2295, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.50. Adjudged Value

(a) In a suit for foreclosure of a tax lien on property, the court shall determine the market value of the property on the date of trial. The appraised value of the property according to the most recent appraisal roll approved by the appraisal review board is presumed to be its market value on the date of trial, and the person being sued has the burden of establishing that the market value of the property differs from that appraised value. The court shall incorporate a finding of the market value of the property on the date of trial in the judgment.

(b) If the judgment in a suit to collect a delinquent tax is for the foreclosure of a tax lien on property, the order of sale shall specify that the property may not be sold to a person owning an interest in the property or to any party to the suit, other than a taxing unit, for less than the market value of the property stated in the judgment or the aggregate amount of the judgments against the property, whichever is less.

[Acts 1979, 66th Leg., p. 2296, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.51. Writ of Possession

If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall

provide for the issuance of a writ of possession to the purchaser at the sale or his assigns within 20 days after the period of redemption expires.

[Acts 1979, 66th Leg., p. 2296, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.52. Judgment for Current Taxes

(a) If the court orders the foreclosure of a tax lien and the sale of real property, the judgment shall order that the taxing unit recover from the proceeds of the sale the amount of tax on the property for the current tax year prorated to the day of judgment.

(b) If the amount of tax for the current tax year has not been determined on the date of judgment, the court shall order recovery of the amount of tax imposed on the property for the preceding tax year, prorated to the date of judgment.

[Acts 1979, 66th Leg., p. 2296, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.53. Order of Sale

If judgment in a suit to collect a delinquent tax is for foreclosure of a tax lien, the court shall order the property sold in satisfaction of the amount of the judgment.

[Acts 1979, 66th Leg., p. 2296, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 33.54. Limitation on Actions Relating to Property Sold for Taxes

(a) Except as provided by Subsection (b) of this section, a cause of action relating to the title to property may not be maintained against the purchaser of the property at a tax sale unless the action commences within three years after the deed executed to the purchaser at the tax sale is filed of record.

(b) If a person other than the purchaser at the tax sale or his successor in interest pays taxes on the property during the three years following the date the deed is filed and that person was not served citation in the suit to foreclose the tax lien, the three-year limitations period does not apply to that person.

(c) When actions are barred by this section, the purchaser at the tax sale or his successor in interest shall be held to have full title to the property, precluding all other claims.

[Acts 1979, 66th Leg., p. 2296, ch. 841, § 1, eff. Jan. 1, 1982.]

## CHAPTER 34. TAX SALES AND REDEMPTION

### SUBCHAPTER A. TAX SALES

#### Sec.

- 34.01. Sale of Property.
- 34.02. Distribution of Proceeds.
- 34.03. Disposition of Excess Proceeds.

Sec.

- 34.04. Claims for Excess Proceeds.
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SUBCHAPTER B. REDEMPTION

- 34.21. Right of Redemption.
- 34.22. Evidence of Title to Redeem Real Property.
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SUBCHAPTER A. TAX SALES

§ 34.01. Sale of Property

(a) Property seized or ordered sold pursuant to foreclosure of a tax lien shall be sold in the manner similar property is sold under execution except as otherwise provided by this subchapter.

(b) The owner of real property subject to sale may file with the officer charged with the sale a written request that the property be divided and that only as many portions be sold as is necessary to pay the tax, penalties, interest, and costs adjudged due against the property. In the request the owner shall describe the desired portions and shall specify the order in which the portions should be sold.

(c) If a sufficient bid is not received, the officer making the sale shall bid the property off to a taxing unit that is a party to the judgment for the aggregate amount of the judgment against the property or for the market value of the property as specified in the judgment, whichever is less. The taxing unit takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. Payments in satisfaction of the judgment and any costs or expenses may not be required until the property is redeemed or resold by the purchasing taxing unit.

(d) The officer making the sale shall prepare a deed to the purchaser of real property at the sale or to any other person whom the purchaser may specify. The deed vests good and perfect title in the purchaser or his assigns to the interest owned by the defendant in the property subject to the foreclosure, subject to the defendant's right of redemption. The deed may be impeached only for fraud.

[Acts 1979, 66th Leg., p. 2297, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.02. Distribution of Proceeds

(a) The proceeds of a tax sale shall be applied first to the payment of costs. The remainder shall be distributed to all taxing units participating in the sale in satisfaction of the taxes, penalties, and interest due each.

(b) If the proceeds are not sufficient to pay the costs and taxes, penalties, and interest due all participants in the sale, each participant is entitled to a share of the proceeds after payment of costs in an amount equal to the proportion its taxes, penalties,

and interest bear to the total amount of taxes, penalties, and interest due all participants in the sale.

(c) If the sale is pursuant to foreclosure of a tax lien, the officer conducting the sale shall pay any excess proceeds after payment of all costs and of all taxes, penalties, and interest due all participants in the sale to the clerk of the court issuing the order of sale.

(d) If the sale is pursuant to seizure of personal property, the officer conducting the sale shall distribute any excess of proceeds as provided by law for excess proceeds in the case of execution.

[Acts 1979, 66th Leg., p. 2297, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 34.03. Disposition of Excess Proceeds

(a) The clerk of the court shall keep the excess proceeds paid into court as provided by Subsection (c) of Section 34.02 of this code for a period of seven years after the date of the sale unless otherwise ordered by the court.

(b) If no claimant establishes entitlement to the proceeds within seven years, the clerk shall distribute the excess proceeds to each taxing unit participating in the sale in an amount equal to the proportion its taxes, penalties, and interests bear to the total amount of taxes, penalties, and interest due all participants in the sale.

(c) The clerk shall note on the execution docket in each case the amount of the excess proceeds, the date they were received, and the date they were transmitted to the taxing units participating in the sale.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 169, ch. 13, § 132, eff. Jan. 1, 1982.]

§ 34.04. Claims for Excess Proceeds

(a) A person may file a petition in the court that ordered the sale setting forth a claim to the excess proceeds within seven years from the date of the sale of the property.

(b) A copy of the petition shall be served on the county attorney or, if there is no county attorney, the district attorney and on all parties to the suit that ordered the sale, if any, not later than the 20th day before the date set for a hearing on the petition.

(c) At the hearing if the court finds that the claimant is entitled to recover the excess proceeds, it shall order that the proceeds be paid to him. Interest or costs may not be allowed.

(d) A claim for the excess proceeds may not be filed after the expiration of seven years from the date the property is sold.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4829, ch. 851, § 26, eff. Aug. 29, 1983.]

**§ 34.05. Resale by Taxing Unit**

(a) If property is sold to a taxing unit that is a party to the judgment, the taxing unit may sell the property at any time, subject to any right of redemption existing at the time of the sale.

(b) Unless the property is sold pursuant to Subsections (c) and (d) of this section, it may not be sold for less than the market value specified in the judgment of foreclosure or the total amount of the judgments against the property, whichever is less, without the consent of each taxing unit entitled to receive proceeds of the sale under the judgment. Joinder of the taxing units in the conveyance of the property constitutes consent. The presiding officer of the governing body of a taxing unit may consent in behalf of the taxing unit.

(c) The taxing unit purchasing the property by resolution of its governing body may request the sheriff to sell the property at a public sale. If the purchasing taxing unit has not sold the property within six months after the date on which the owner's right of redemption terminates, any taxing unit that is entitled to receive proceeds of the sale by resolution of its governing body may request the sheriff in writing to sell the property at a public sale. On receipt of a request made under this subsection, the sheriff shall sell the property as provided by Subsection (d) of this section.

(d) Except as provided by this subsection, all public sales requested as provided by Subsection (c) of this section shall be conducted in the manner prescribed by the Rules of Civil Procedure for the sale of property under execution. The notice of the sale must contain a description of the property to be sold, which must be a legal description in the case of real property, the number and style of the suit under which the property was sold at the tax foreclosure sale, and the date of the tax foreclosure sale. The officer conducting the sale shall reject any bid for the property if it is his judgment that the amount bid is insufficient. If all bids are insufficient, the property shall be readvertised and offered for sale again. The acceptance of a bid by the officer conducting the sale is conclusive and binding on the question of its sufficiency. An action to set aside the sale on the grounds that the bid is insufficient may not be sustained in court, except that a taxing unit that participates in distribution of proceeds of the sale may file an action within one year after the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser.

(e) The presiding officer of a taxing unit or the sheriff selling real property pursuant to this section shall execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The conveyance shall be made subject to any remaining right of redemption at the time of the sale.

(f) An action attacking the validity of a resale of property pursuant to this section may not be instituted after the expiration of one year after the date of the resale.

[Acts 1979, 66th Leg., p. 2298, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4829, ch. 851, § 27, eff. Aug. 29, 1983.]

**§ 34.06. Distribution of Proceeds of Resale**

(a) The proceeds of a resale of property purchased by a taxing unit at a tax foreclosure sale shall be paid to the purchasing taxing unit.

(b) The purchasing taxing unit shall pay all costs and expenses of court and sale and shall distribute the remainder of the proceeds as provided by Section 34.02 of this code for distribution of proceeds after payment of costs.

[Acts 1979, 66th Leg., p. 2299, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 34.07. Subrogation of Purchaser at Void Sale**

(a) The purchaser at a void or defective tax sale is subrogated to the rights of the taxing unit in whose behalf the property was sold to the same extent a purchaser at a void or defective sale conducted in behalf of a judgment creditor is subrogated to the rights of the judgment creditor.

(b) Except as provided by Subsection (c) of this section, the purchaser at a void or defective tax sale is subrogated to the tax lien of the taxing unit in whose behalf the property was sold to the same extent a purchaser at a void or defective mortgage or other lien foreclosure sale is subrogated to the lien of the lienholder, and the purchaser is entitled to a reforeclosure of the lien to which he is subrogated.

(c) If the purchaser at a void or defective tax sale paid less than the total amount of the judgment against the property, he is subrogated to the tax lien only in the amount he paid at the sale.

(d) In lieu of pursuing the rights to which he is subrogated, a purchaser at a void tax sale may elect to file an action against the taxing units to which the proceeds of the sale were distributed to recover the amount paid at the sale. A purchaser who files a suit authorized by this subsection waives all rights to which he would otherwise be subrogated.

[Acts 1979, 66th Leg., p. 2299, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 34.08. Repealed by Acts 1983, 68th Leg., p. 4829, ch. 851, § 28, eff. Aug. 29, 1983**

[Sections 34.09 to 34.20 reserved for expansion]

**SUBCHAPTER B. REDEMPTION****§ 34.21. Right of Redemption**

(a) The owner of real property sold at a tax sale may redeem the property within two years after the date on which the purchaser's deed is filed for

record by paying the purchaser the amount he bid for the property, the amount of the deed recording fee, and the amount paid by the purchaser as taxes, penalties, interest, and costs on the property, plus 25 percent of the aggregate total if the property is redeemed during the first year of the redemption period or 50 percent of the aggregate total if the property is redeemed during the second year of the redemption period.

(b) If the owner of the property makes an affidavit that he has made diligent search in the county in which the property is located for the purchaser at the tax sale and has failed to find him, that the purchaser at the sale is not a resident of the county in which the property is located, that he and the purchaser cannot agree on the amount of redemption money due, or that the purchaser refuses to give him a quitclaim deed to the property, the owner may redeem the land by paying the required amount to the assessor-collector for the county in which the property is located. The assessor-collector receiving the payment shall give the owner a signed receipt witnessed by two persons. The receipt, when recorded, is notice to all persons that the property described has been redeemed. The assessor-collector shall on demand pay the money received by him to the purchaser at the tax sale.

[Acts 1979, 66th Leg., p. 2300, ch. 841, § 1, eff. Jan. 1, 1979.]

**§ 34.22. Evidence of Title to Redeem Real Property**

(a) A person asserting ownership of real property sold for taxes is entitled to redeem the property if he had title to the property or he was in possession of the property in person or by tenant either at the time suit to foreclose the tax lien on the property was instituted or at the time the property was sold. A defect in the chain of title to the property does not defeat an offer to redeem.

(b) A person who establishes title to real property that is superior to the title of one who has previously redeemed the property is entitled to redeem the property during the redemption period by paying the amounts provided by law to the person who previously redeemed the property.

[Acts 1979, 66th Leg., p. 2300, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 34.23. Distribution of Redemption Proceeds**

(a) If the owner of property sold for taxes to a taxing unit redeems the property before the property is resold, the taxing unit shall distribute the redemption proceeds in the manner that proceeds of the resale of property are distributed.

(b) If the owner of property sold for taxes redeems the property from the taxing unit after the property has been resold, the taxing unit shall pay the purchaser at the resale the amount he paid for the property, plus 25 percent of that amount if the redemption occurs within one year after the date

the property is resold or 50 percent of that amount if the redemption occurs more than one year after the date the property is resold. The taxing unit shall distribute the redemption proceeds remaining after payment of the amount due the purchaser at resale to the taxing units adjudged to have tax liens against the property in the proportion the amount of each unit's lien bears to the total amount of all liens established in the foreclosure suit.

[Acts 1979, 66th Leg., p. 2300, ch. 841, § 1, eff. Jan. 1, 1982.]

**SUBTITLE F. REMEDIES**

**CHAPTER 41. LOCAL REVIEW**

**SUBCHAPTER A. REVIEW OF APPRAISAL RECORDS BY APPRAISAL REVIEW BOARD**

**Sec.**

- 41.01. Scope of Review.
- 41.02. Action by Board.
- 41.03. Challenge by Taxing Unit.
- 41.04. Challenge Petition.
- 41.05. Hearing on Challenge.
- 41.06. Notice of Challenge Hearing.
- 41.07. Determination of Challenge.
- 41.08. Correction of Records on Order of Board.
- 41.09. Clerical Errors.
- 41.10. Correction of Records on Recommendation of Chief Appraiser.
- 41.11. Notice to Property Owner of Change in Records.
- 41.12. Completion of Review by Board.

**SUBCHAPTER B. EQUALIZATION BY COMMISSIONERS COURT [REPEALED]**

41.21 to 41.27. Repealed.

**SUBCHAPTER C. TAXPAYER PROTEST**

- 41.41. Right of Protest.
- 41.42. Protest of Situs.
- 41.43. Protest of Inequality of Appraisal.
- 41.44. Notice of Protest.
- 41.45. Hearing on Protest.
- 41.46. Notice of Protest Hearing.
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**SUBCHAPTER D. ADMINISTRATIVE PROVISIONS**

- 41.61. Issuance of Subpoena.
- 41.62. Service and Enforcement of Subpoena.
- 41.63. Compensation for Subpoenaed Witness.
- 41.64. Inspection of Tax Records.
- 41.65. Request for State Assistance.
- 41.66. Hearing Procedures.
- 41.67. Evidence.
- 41.68. Record of Proceeding.
- 41.69. Conflict of Interest.

**SUBCHAPTER A. REVIEW OF APPRAISAL RECORDS BY APPRAISAL REVIEW BOARD**

**§ 41.01. Scope of Review**

The appraisal review board shall examine the appraisal records for the appraisal district to determine whether:

(1) appraisals are substantially uniform in terms of their relationship to the appraised value required by law;

(2) an exemption or a partial exemption is improperly granted;

(3) land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code;<sup>1</sup> or

(4) the records do not conform to the requirements of law in any other respect.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 169, ch. 13, § 133, eff. Jan. 1, 1982.]

<sup>1</sup> Section 23.41 et seq., 23.51 et seq., or 23.71 et seq.

#### § 41.02. Action by Board

If after reviewing the appraisal records the appraisal review board finds that appraisals are not substantially uniform or that the records do not conform to the requirements of law in some other respect, the board shall refer the matter to the appraisal office and by written order shall direct the chief appraiser to make the reappraisals or corrections in the records that are necessary to conform the records to the requirements of law.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 41.03. Challenge by Taxing Unit

A taxing unit is entitled to challenge before the appraisal review board:

(1) the level of appraisals of any category of property in the district or in any territory in the district, but not the appraised value of a single taxpayer's property;

(2) an exclusion of property from the appraisal records;

(3) a grant in whole or in part of a partial exemption;

(4) a determination that land qualifies for appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code;<sup>1</sup> or

(5) failure to identify the taxing unit as one in which a particular property is taxable.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 169, ch. 13, § 134, eff. Jan. 1, 1984.]

<sup>1</sup> Section 23.41 et seq.; 23.51 et seq.; 23.71 et seq.

#### § 41.04. Challenge Petition

The appraisal review board is not required to hear or determine a challenge unless the taxing unit initiating the challenge files a petition with the board before June 1 or within 15 days after the date that the appraisal records are submitted to the appraisal review board, whichever is later. The

petition must include an explanation of the grounds for the challenge.

[Acts 1979, 66th Leg., p. 2302, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 169, ch. 13, § 134, eff. Jan. 1, 1982.]

#### § 41.05. Hearing on Challenge

(a) On the filing of a challenge petition, the appraisal review board shall schedule a hearing on the challenge.

(b) The taxing unit initiating the challenge and each taxing unit in which property involved in the challenge is or may be taxable are entitled to an opportunity to appear to offer evidence or argument.

(c) The chief appraiser shall appear at each hearing to represent the appraisal office.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 41.06. Notice of Challenge Hearing

(a) The secretary of the appraisal review board shall deliver to the presiding officer of the governing body of each taxing unit entitled to appear at a challenge hearing written notice of the date, time, and place fixed for the hearing. The secretary shall deliver the notice not later than the 10th day before the date of the hearing.

(b) The secretary shall give the chief appraiser advance notice of the date, time, place, and subject matter of each challenge hearing.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982.]

#### § 41.07. Determination of Challenge

(a) The appraisal review board shall determine each challenge and make its decision by written order.

(b) If on determining a challenge the board finds that the appraisal records are incorrect in some respect raised by the challenge, the board shall refer the matter to the appraisal office and by its order shall direct the chief appraiser to make the reappraisals or corrections in the records that are necessary to conform the records to the requirements of law.

(c) The board shall determine all challenges before approval of the appraisal records as provided by Section 41.12 of this code.

(d) The board shall deliver by certified mail a notice of the issuance of the order and a copy of the order to the taxing unit.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 135, eff. Jan. 1, 1982.]



**§ 41.08. Correction of Records on Order of Board**

The chief appraiser shall make the reappraisals or other corrections of the appraisal records ordered by the appraisal review board as provided by this subchapter. The chief appraiser shall submit a copy of the corrected records to the board for its approval as promptly as practicable.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 41.09. Clerical Errors**

At any time before approval of the appraisal records as provided by Section 41.12 of this code, the appraisal review board in writing may correct a clerical error in the records without referring the matter to the appraisal office if the correction will not affect the tax liability of a property owner and if the chief appraiser does not object in writing.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 41.10. Correction of Records on Recommendation of Chief Appraiser**

At any time before approval of the appraisal records as provided by Section 41.12 of this code, the chief appraiser may submit written recommendations to the appraisal review board for corrections in the records. If the board approves a recommended correction and it will not result in an increase in the tax liability of a property owner, the board may make the correction by written order.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 41.11. Notice to Property Owner of Change in Records**

(a) Not later than the 15th day before the date the appraisal review board approves the appraisal records as provided by Section 41.12 of this code, the secretary of the board shall deliver written notice to a property owner of any change in the records that is ordered by the board as provided by this subchapter and that will result in an increase in the tax liability of the property owner.

(b) The secretary shall include in the notice a brief explanation of the procedure for protesting the change.

(c) Failure to deliver notice to a property owner as required by this section nullifies the change in the records to the extent the change is applicable to that property owner.

[Acts 1979, 66th Leg., p. 2303, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 41.12. Completion of Review by Board**

The appraisal review board shall complete its review of the appraisal records, approve the records, and submit a list of its approved changes in

the records to the chief appraiser by July 20 or as soon thereafter as practicable.

[Acts 1979, 66th Leg., p. 2304, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 136, eff. Jan 1, 1982.]

[Sections 41.13 to 41.20 reserved for expansion]

**SUBCHAPTER B. EQUALIZATION BY COMMISSIONERS COURT [REPEALED]**

**§§ 41.21 to 41.27. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 167 (a), eff. Jan. 1, 1982**

**SUBCHAPTER C. TAXPAYER PROTEST**

**§ 41.41. Right of Protest**

A property owner is entitled to protest before the appraisal review board the following actions:

(1) determination of the appraised value of his property or, in the case of land appraised as provided by Subchapter C, D, or E, Chapter 23 of this code,<sup>1</sup> determination of its appraised or market value;

(2) unequal appraisal of his property in comparison to the weighted average level of appraisals of other property in the appraisal district;

(3) inclusion of his property on the appraisal records;

(4) denial to him in whole or in part of a partial exemption;

(5) determination that his land does not qualify for appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code;

(6) identification of the taxing units in which his property is taxable in the case of the appraisal district's appraisal roll;

(7) determination that he is the owner of property; or

(8) any other action that applies to the property owner and adversely affects him.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 137, ch. 13, § 170, eff. Jan. 1, 1982.]

<sup>1</sup> Section 23.41 et seq.; 23.51 et seq.; 23.71 et seq.

**§ 41.42. Protest of Situs**

A protest against the inclusion of property on the appraisal records for an appraisal district on the ground that the property does not have taxable situs in that district shall be determined in favor of the protesting party if he establishes that the property is subject to appraisal by another district or that the property is not taxable in this state. The chief appraiser of a district in which the property owner prevails in a protest of situs shall notify the

appraisal office of the district in which the property owner has established situs.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 137, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 5034, ch. 906, § 1, eff. Jan. 1, 1984.]

#### § 41.43. Protest of Inequality of Appraisal

A protest on the ground of unequal appraisal of property may not be determined in favor of the protesting party unless he establishes that his property is appraised at a level greater than the weighted average level of appraisal of other properties in the appraisal district.

[Acts 1979, 66th Leg., p. 2305, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 137, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4924, ch. 877, § 2, eff. Jan. 1, 1984.]

#### § 41.44. Notice of Protest

(a) Except as provided by Subsection (b) of this section, to be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board having authority to hear the matter protested:

(1) prior to the date the appraisal review board approves the appraisal records; or

(2) in the case of a protest of a change in the appraisal records ordered as provided by Subchapter A of this chapter, within 10 days after the date notice of the change is delivered to the property owner.

(b) A property owner who files his notice of protest after the deadline prescribed by Subsection (a)(2) of this section but before the appraisal review board approves the appraisal records is entitled to a hearing and determination of the protest if he shows good cause as determined by the board for failure to file the notice on time.

(c) A notice of protest is sufficient if it identifies the protesting property owner and the property that is the subject of the protest and indicates apparent dissatisfaction with some determination of the appraisal office. The notice need not be on an official form, but the State Property Tax Board shall prescribe a form that provides for more detail about the nature of the protest. The form must permit a property owner to include each property in the appraisal district that is the subject of a protest. The State Property Tax Board, each appraisal office, and each appraisal review board shall make the forms readily available and deliver one to a property owner on request.

[Acts 1979, 66th Leg., p. 2306, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 170, ch. 13, § 137, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4945, ch. 884, § 1, eff. Jan. 1, 1984.]

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#### § 41.45. Hearing on Protest

(a) On the filing of a notice as required by Section 41.44 of this code, the appraisal review board shall schedule a hearing on the protest.

(b) The property owner initiating the protest is entitled to an opportunity to appear to offer evidence or argument. The property owner may offer his evidence or argument by affidavit without personally appearing if he attests to the affidavit before an officer authorized to administer oaths and submits the affidavit to the board hearing the protest before it begins the hearing on the protest. On receipt of an affidavit, the board shall notify the chief appraiser. The chief appraiser may inspect the affidavit and is entitled to a copy on request.

(c) The chief appraiser shall appear at each protest hearing before the appraisal review board to represent the appraisal office.

(d) An appraisal review board consisting of more than three members may sit in panels of not fewer than three members to conduct protest hearings. However, the determination of a protest heard by a panel must be made by the board.

[Acts 1979, 66th Leg., p. 2306, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 171, ch. 13, § 138, eff. Jan. 1, 1982.]

#### § 41.46. Notice of Protest Hearing

(a) The appraisal review board before which a protest hearing is scheduled shall deliver written notice to the property owner initiating a protest of the date, time, and place fixed for the hearing on the protest. The board shall deliver the notice not later than the 15th day before the date of the hearing.

(b) The board shall give the chief appraiser advance notice of the date, time, place, and subject matter of each protest hearing.

[Acts 1979, 66th Leg., p. 2306, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 172, ch. 13, § 139, eff. Jan. 1, 1982.]

#### § 41.47. Determination of Protest

(a) The appraisal review board hearing a protest shall determine the protest and make its decision by written order.

(b) If on determining a protest the board finds that the appraisal records are incorrect in some respect raised by the protest, the board by its order shall correct the appraisal records by changing the appraised value placed on the protesting property owner's property or by making the other changes in the appraisal records that are necessary to conform the records to the requirements of law.

(c) The board shall determine all protests before it before approval of the appraisal records as provided by Subchapter A of this chapter.

(d) The board shall deliver by certified mail a notice of issuance of the order and a copy of the order to the property owner and the chief appraiser.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 172, ch. 13, § 140, eff. Jan. 1, 1982.]

[Sections 41.48 to 41.60 reserved for expansion]

**SUBCHAPTER D. ADMINISTRATIVE PROVISIONS**

**§ 41.61. Issuance of Subpoena**

(a) If reasonably necessary in the course of a proceeding provided by this chapter, the appraisal review board on its own motion or at the request of a party may subpoena witnesses or books, records, or other documents.

(b) On the written request of a party to a proceeding provided by this chapter, the appraisal review board shall issue a subpoena if the requesting party:

(1) shows good cause for issuing the subpoena; and

(2) deposits with the board a sum the board determines is reasonably sufficient to insure payment of the costs estimated to accrue for issuance and service of the subpoena and for compensation of the individual to whom it is directed.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 172, ch. 13, § 141, eff. Jan. 1, 1982.]

**§ 41.62. Service and Enforcement of Subpoena**

(a) A sheriff or constable shall serve a subpoena issued as provided by this subchapter.

(b) If the person to whom a subpoena is directed fails to comply, the issuing board or the party requesting the subpoena may bring suit in the district court to enforce the subpoena. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The county attorney or, if there is no county attorney, the district attorney shall represent the board in a suit to enforce a subpoena.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 172, ch. 13, § 142, eff. Jan. 1, 1982.]

**§ 41.63. Compensation for Subpoenaed Witness**

(a) An individual who is not a party to the proceeding and who complies with a subpoena issued as provided by this subchapter is entitled to:

(1) the reasonable costs of producing the documents;

(2) mileage of 15 cents a mile for going to and returning from the place of the proceeding; and

(3) a fee of \$10 a day for each whole or partial day that the individual is necessarily present at the proceedings.

(b) The appraisal review board by rule may prescribe greater mileage or fee, but an increase is not effective unless uniformly applicable to all individuals who are entitled to mileage or fee as provided by Subsection (a) of this section.

(c) Compensation authorized as provided by this section is paid by the appraisal office if the subpoena is issued on the motion of the appraisal review board or by the party requesting the subpoena.

(d) Compensation is not payable unless the amount claimed is approved by the appraisal review board that issued the subpoena.

[Acts 1979, 66th Leg., p. 2307, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 143, eff. Jan. 1, 1982.]

**§ 41.64. Inspection of Tax Records**

The appraisal review board may inspect the records or other materials of the appraisal office that are not made confidential under this code. On demand of the board, the chief appraiser shall produce the materials as soon as practicable.

[Acts 1979, 66th Leg., p. 2308, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 144, eff. Jan. 1, 1982.]

**§ 41.65. Request for State Assistance**

The appraisal review board may request the State Property Tax Board to assist in determining the accuracy of appraisals by the appraisal office or to provide other professional assistance. The appraisal office shall reimburse the costs of providing assistance if the State Property Tax Board requests reimbursement.

[Acts 1979, 66th Leg., p. 2308, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 144, eff. Jan. 1, 1982.]

**§ 41.66. Hearing Procedures**

(a) The appraisal review board shall establish by rule the procedures for hearings it conducts as provided by Subchapters A and C of this chapter.<sup>1</sup>

(b) Hearing procedures to the greatest extent practicable shall be informal.

(c) A property owner who is entitled as provided by this chapter to appear at a hearing may appear by himself or by his agent. A taxing unit may appear by a designated agent.

(d) Hearings conducted as provided by this chapter are open to the public.

[Acts 1979, 66th Leg., p. 2308, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 145, eff. Jan. 1, 1982.]

<sup>1</sup> Sections 41.01 et seq. and 41.41 et seq.

## § 41.67. Evidence

(a) A member of the appraisal review board may swear witnesses who testify in proceedings under this chapter. All testimony must be given under oath.

(b) Documentary evidence may be admitted in the form of a copy if the appraisal review board conducting the proceeding determines that the original document is not readily available. A party is entitled to an opportunity to compare a copy with the original document on request.

(c) Official notice may be taken of any fact judicially cognizable. A party is entitled to an opportunity to contest facts officially noticed.

[Acts 1979, 66th Leg., p. 2308, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 146, eff. Jan. 1, 1982.]

## § 41.68. Record of Proceeding

The appraisal review board shall keep a record of its proceedings in the form and manner prescribed by the State Property Tax Board.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 147, eff. Jan. 1, 1982.]

## § 41.69. Conflict of Interest

A member of the appraisal review board may not participate in the determination of a taxpayer protest in which he is interested or in which he is related to a party by affinity within the second degree or by consanguinity within the third degree.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 173, ch. 13, § 147, eff. Jan. 1, 1982.]

## CHAPTER 42. JUDICIAL REVIEW

## SUBCHAPTER A. IN GENERAL

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- 42.01. Right of Appeal by Property Owner.
- 42.02. Right of Appeal by Chief Appraiser.
- 42.03. Right of Appeal by County.
- 42.031. Right of Appeal by Taxing Unit.
- 42.04. Repealed.
- 42.05. State Property Tax Board as Party.
- 42.06. Notice of Appeal.
- 42.07. Costs of Appeal.
- 42.08. Forfeiture of Remedy for Nonpayment of Taxes.
- 42.09. Remedies Exclusive.

## SUBCHAPTER B. REVIEW BY DISTRICT COURT

- 42.21. Petition for Review.
- 42.22. Venue.
- 42.23. Scope of Review.
- 42.24. Action by Court.
- 42.25. Remedy for Excessive Appraisal.
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- 42.27. Repealed.
- 42.28. Appeal of District Court Judgment.
- 42.29. Attorney's Fees.

## SUBCHAPTER C. POSTAPPEAL ADMINISTRATIVE PROCEDURES

## Sec.

- 42.41. Correction of Rolls.
- 42.42. Corrected and Supplemental Tax Bills.
- 42.43. Refund.

## SUBCHAPTER A. IN GENERAL

## § 42.01. Right of Appeal by Property Owner

A property owner is entitled to appeal:

(1) an order of the appraisal review board determining a protest by the property owner as provided by Subchapter C of Chapter 41 of this code;<sup>1</sup>

(2) an order of the State Property Tax Board determining a protest by the property owner of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles as provided by Subchapter A, Chapter 24 of this code;<sup>2</sup> or

(3) an order of the State Property Tax Board issued as provided by Subchapter B, Chapter 24 of this code<sup>3</sup> apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

[Acts 1979, 66th Leg., p. 2309, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, § 148, eff. Jan. 1, 1982.]

<sup>1</sup> Section 41.41 et seq.

<sup>2</sup> Section 24.01 et seq.

<sup>3</sup> Section 24.31 et seq.

## § 42.02. Right of Appeal by Chief Appraiser

The chief appraiser is entitled to appeal an order of the appraisal review board determining a taxpayer protest as provided by Subchapter C, Chapter 41 of this code<sup>1</sup> if he has written approval of the local appraisal district board of directors to appeal.

[Acts 1979, 66th Leg., p. 2310, ch. 841, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 41.41 et seq.

## § 42.03. Right of Appeal by County

A county may appeal the order of the State Property Tax Board issued as provided by Subchapter B, Chapter 24 of this code<sup>1</sup> apportioning among the counties the appraised value of railroad rolling stock.

[Acts 1979, 66th Leg., p. 2310, ch. 841, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 24.31 et seq.

## § 42.031. Right of Appeal by Taxing Unit

A taxing unit is entitled to appeal an order of the appraisal review board determining a challenge by the taxing unit,

[Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, § 149, eff. Jan. 1, 1982.]

§ 42.04. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 167(a), eff. Jan. 1, 1982

§ 42.05. State Property Tax Board as Party

The State Property Tax Board is an opposing party in an appeal by:

(1) a property owner of an order of the board determining a protest of the appraisal, interstate allocation, or intrastate apportionment of transportation business intangibles; or

(2) a county or a property owner of an order of the board apportioning among the counties the appraised value of railroad rolling stock.

[Acts 1979, 66th Leg., p. 2310, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.06. Notice of Appeal

(a) To exercise his right of appeal, a party must file written notice of appeal within 15 days after the date he receives the notice required by Section 41.47 or, in the case of a taxing unit, by Section 41.07 of this code that the order appealed has been issued.

(b) The notice must be filed with the body that issued the order appealed.

(c) If the chief appraiser, a taxing unit, or a county appeals, the body with which the notice of appeal is filed shall deliver a copy of the notice to the property owner whose property is involved in the appeal within 10 days after the date the notice is filed.

(d) On the filing of a notice of appeal, the chief appraiser shall indicate where appropriate those entries on the appraisal records that are subject to the appeal.

[Acts 1979, 66th Leg., p. 2310, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, § 150, eff. Jan. 1, 1982.]

§ 42.07. Costs of Appeal

The reviewing court in its discretion may charge all or part of the costs of an appeal taken as provided by this chapter against any of the parties.

[Acts 1979, 66th Leg., p. 2310, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.08. Forfeiture of Remedy for Nonpayment of Taxes

(a) The pendency of an appeal as provided by this chapter does not affect the date taxes become delinquent.

(b) A property owner who appeals as provided by this chapter must pay the tax due on the amount of value of the property involved in the pending action that is not in dispute or the amount of tax paid on the property in the preceding year, whichever is greater, but not to exceed the amount of tax that would be due under the order from which the pending appeal was taken, before the delinquency date or he forfeits his right to proceed to a final determi-

nation of the pending action. In that event, the reviewing court on its own motion or on the motion of an opposing party shall dismiss the pending action.

[Acts 1979, 66th Leg., p. 2310, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 5049, ch. 910, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1983 amendatory act provides:

"The change in law made by this Act applies only to the payment of property taxes pending appeal made on or after the effective date of this Act. The payment of property taxes pending appeal made before the effective date of this Act is covered by the law in effect when the payment was made, and the former law is continued in effect for that purpose."

§ 42.09. Remedies Exclusive

The procedures prescribed by this title for adjudication of the grounds of protest authorized by this title are exclusive, and a property owner may not raise any of those grounds:

(1) in defense to a suit to enforce collection of delinquent taxes; or

(2) as a basis of a claim for relief in a suit by the property owner to arrest or prevent the tax collection process or to obtain a refund of taxes paid.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

[Sections 42.10 to 42.20 reserved for expansion]

SUBCHAPTER B. REVIEW BY DISTRICT COURT

§ 42.21. Petition for Review

(a) A party who appeals as provided by this chapter must file a petition for review with the district court within 45 days after the party received notice that a final order has been entered from which an appeal may be had; failure to timely file a petition bars any appeal under this section.

(b) A petition for review under this chapter must be brought against the appraisal district and the appraisal review board. The appraisal district is served by service on the chief appraiser. The appraisal review board is served by service on the chairman of the appraisal review board. Citation is issued and served in the manner provided by law for civil suits generally.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 5344, ch. 981, § 1, eff. Aug. 29, 1983.]

§ 42.22. Venue

Venue is in the county in which the appraisal review board that issued the order appealed is located. Venue is in Travis County if the order appealed was issued by the State Property Tax Board.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, § 151, eff. Jan. 1, 1982.]

**§ 42.23. Scope of Review**

(a) Review is by trial de novo. The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally.

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or State Property Tax Board, except to the extent necessary to establish its jurisdiction.

(c) Any party is entitled to trial by jury on demand.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, § 152, eff. Jan. 1, 1982.]

**§ 42.24. Action by Court**

In determining an appeal, the district court may:

(1) fix the appraised value of property in accordance with the requirements of law if the appraised value is at issue;

(2) enter the orders necessary to ensure equal treatment under the law for the appealing property owner if inequality in the appraisal of his property is at issue; or

(3) enter other orders necessary to preserve rights protected by and impose duties required by the law.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 42.25. Remedy for Excessive Appraisal**

If the court determines that the appraised value of property according to the appraisal roll exceeds the appraised value required by law, the property owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 42.26. Remedy for Unequal Appraisal**

The district court may not grant relief on the ground that a property is appraised unequally in comparison to the level of appraisals of other property in the appraisal district unless the appraised value of the property varies at least 10 percent from its value calculated on the basis of the weighted average level of appraisal of other properties in the district. In that event, the court shall order the appraised value changed to the value as calculated on the basis of the weighted average level of appraisal of those properties.

[Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, § 153, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4924, ch. 877, § 3, eff. Jan. 1, 1984.]

**§ 42.27. Repealed by Acts 1983, 68th Leg., p. 5033, ch. 905, § 2, eff. Aug. 29, 1983**

Section 3 of the 1983 repealing act provides:

"The change in law made by this Act applies only to an appeal for which notice of appeal is filed on or after the effective date of this Act. An appeal for which notice of appeal is filed before the effective date of this Act is covered by the law in effect when the notice of appeal was filed, and the former law is continued in effect for that purpose."

**§ 42.28. Appeal of District Court Judgment**

A party may appeal the final judgment of the district court as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the State Property Tax Board, or the commissioners court.

[Acts 1979, 66th Leg., p. 2312, ch. 841, § 1, eff. Jan. 1, 1982.]

**§ 42.29. Attorney's Fees**

A taxpayer who prevails in an appeal to the court under Section 42.25 or Section 42.26 of this code may be awarded reasonable attorney's fees not to exceed the greater of \$5,000 or 20 percent of the total amount of taxes in dispute.

[Acts 1983, 68th Leg., p. 5033, ch. 905, § 1, eff. Aug. 29, 1983.]

Section 3 of the 1983 Act provides:

"The change in law made by this Act applies only to an appeal for which notice of appeal is filed on or after the effective date of this Act. An appeal for which notice of appeal is filed before the effective date of this Act is covered by the law in effect when the notice of appeal was filed, and the former law is continued in effect for that purpose."

[Sections 42.30 to 42.40 reserved for expansion]

SUBCHAPTER C. POSTAPPEAL  
ADMINISTRATIVE  
PROCEDURES

**§ 42.41. Correction of Rolls**

The chief appraiser shall correct the appraisal roll and other appropriate records as necessary to reflect the final determination of an appeal, and the assessor for each affected taxing unit shall correct the tax roll and other appropriate records for which he is responsible.

[Acts 1979, 66th Leg., p. 2312, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 175, ch. 13, § 155, eff. Jan. 1, 1982.]

**§ 42.42. Corrected and Supplemental Tax Bills**

(a) Except as provided by Subsection (b) of this section, if the final determination of an appeal that changes a property owner's tax liability occurs after the tax bill is mailed, the assessor for each affected taxing unit shall prepare and mail a corrected tax bill in the manner provided by Chapter 31 of this code for tax bills generally. The assessor shall include with the bill a brief explanation of the reason for and effect of the corrected bill.

(b) If the final determination of an appeal that increases a property owner's tax liability occurs after the property owner has paid his taxes, the assessor for each affected taxing unit shall prepare

and mail a supplemental tax bill in the manner provided by Chapter 31 of this code for tax bills generally. The assessor shall include with the bill a brief explanation of the reason for and effect of the supplemental bill. The additional taxes due on receipt of the supplemental bill and becomes delinquent if not paid before the delinquency date prescribed by Chapter 31 of this code or before the first day of the next month after the date of mailing that will provide at least 21 days for payment of the tax, whichever is later.

(c) If the final determination of an appeal occurs after the property owner has paid a portion of the tax finally determined to be due as required by Section 42.08 of this code, the assessor for each affected taxing unit shall prepare and mail a supplemental tax bill in the form and manner prescribed by Subsection (b) of this section. The additional tax is due and becomes delinquent as provided by Subsection (b), but the property owner is liable for interest on the tax included in the supplemental bill at the rate prescribed by this code for delinquent taxes.

[Acts 1979, 66th Leg., p. 2312, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 42.43. Refund

If the final determination of an appeal that decreases a property owner's tax liability occurs after the property owner has paid his taxes, the taxing unit shall refund to the property owner the difference between the amount of taxes paid and amount of taxes for which the property owner is liable.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

CHAPTER 43. SUIT AGAINST APPRAISAL OFFICE

Sec.

- 43.01. Authority to Bring Suit.
- 43.02. Venue.
- 43.03. Action by Court.

§ 43.01. Authority to Bring Suit

A taxing unit may sue the appraisal district that appraises property for the unit to compel the appraisal district to comply with the provisions of this title, rules of the State Property Tax Board, or other applicable law.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 43.02. Venue

Venue is in the county in which the appraisal district is established.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

§ 43.03. Action by Court

The court as the evidence warrants shall enter those orders necessary to compel compliance by the appraisal office.

[Acts 1979, 66th Leg., p. 2313, ch. 841, § 1, eff. Jan. 1, 1982.]

TITLE 2. STATE TAXATION

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 101. GENERAL PROVISIONS

Sec.

- 101.001. Purpose of Title.
- 101.002. Construction of Code.
- 101.003. Definitions.
- 101.004. Common Law.
- 101.005. Grammatical Errors: Punctuation.
- 101.006. Fiscal Year.
- 101.007. References to State Officers.
- 101.008. Occupation Taxes Levied by Local Governments.
- 101.109. Allocation and Transfer of Net Revenues.

*Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 389, enacted Title 2. Section 40 of said Act provides:*

*"Sec. 40. Legislative Intent. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act."*

§ 101.001. Purpose of Title

(a) This title is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent state tax laws more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1981, 67th Leg., p. 1492, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 101.002. Construction of Code

The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construc-

tion of each provision of this title, except as specifically provided by this title.

[Acts 1981, 67th Leg., p. 1492, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.003. Definitions

In this title:

- (1) "Comptroller" means the comptroller of public accounts of the State of Texas.
- (2) "Month" means a calendar month.
- (3) "Year" means a calendar year.
- (4) "Effects" means personal property or an interest in personal property.
- (5) "Affidavit" means a statement in writing of a fact signed by the party making the statement, sworn to before some officer authorized to administer oaths, and officially certified by the officer under the officer's seal of office.
- (6) "Officer" means a state officer.
- (7) "Standard time" means that designation of time prescribed by Chapter 359, Acts of the 50th Legislature, Regular Session, 1947 (Article 23a, Vernon's Texas Civil Statutes).
- (8) "Taxpayer" means a person liable for a tax imposed by this title.
- (9) "Attorney general" means the attorney general of the State of Texas.
- (10) "Treasurer" means the state treasurer of Texas.
- (11) "Report" means a tax return, declaration, statement, or other document required to be filed with the comptroller by a provision of this title.

[Acts 1981, 67th Leg., p. 1492, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.004. Common Law

The rule that statutes in derogation of the common law shall be construed strictly does not apply to this title.

[Acts 1981, 67th Leg., p. 1493, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.005. Grammatical Errors: Punctuation

(a) A grammatical error does not vitiate a law, and when a sentence or clause is without meaning, words and clauses may be transposed to determine the intended meaning.

(b) The punctuation of a sentence does not control or affect the intention of the legislature in the enactment of this title.

[Acts 1981, 67th Leg., p. 1493, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.006. Fiscal Year

Article 12, Revised Civil Statutes of Texas, 1925, as amended, establishing a fiscal year for the state, applies to this title.

[Acts 1981, 67th Leg., p. 1493, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.007. References to State Officers

A reference in this title to the comptroller, the treasurer, or another officer includes authorized representatives and employees of the officer unless the provision indicates that only the officer is intended in the reference.

[Acts 1981, 67th Leg., p. 1493, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.008. Occupation Taxes Levied by Local Governments

No city, county, or other political subdivision may levy an occupation tax imposed by this title unless specifically permitted to do so by state law.

[Acts 1981, 67th Leg., p. 1493, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 101.009. Allocation and Transfer of Net Revenues

(a) Except as provided by Subsection (b) of this section, all revenues collected from the taxes imposed by the chapters of this title and by Chapter 8, Title 132, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> after deduction of the portion allocated for collection, enforcement, and administration purposes, shall first be deposited in the general revenue fund. After the initial deposit, transfers from the general revenue fund to the available school fund shall be made at the time, in the manner, and in the amounts provided by law.

(b) Cigarette tax revenue allocated under Section 154.603(b) of this code shall be allocated as provided by Section 154.603 of this code. Motor fuel tax revenue shall be allocated and deposited as provided by Subchapter F of Chapter 153 of this code.<sup>2</sup>

[Acts 1981, 67th Leg., p. 2776, ch. 752, § 9(a), eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 8801 et seq.

<sup>2</sup> Section 153.501 et seq.

### SUBTITLE B. ENFORCEMENT AND COLLECTION

#### CHAPTER 111. COLLECTION PROCEDURES

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SUBCHAPTER A. COLLECTION DUTIES AND POWERS

§ 111.001. Comptroller to Collect Taxes

The comptroller shall collect the taxes imposed by this title except as otherwise provided by this title.

[Acts 1981, 67th Leg., p. 1495, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 111.002. Comptroller's Rules; Compliance; Forfeiture

(a) The comptroller may adopt rules that do not conflict with the laws of this state or the constitution of this state or the United States for the enforcement of the provisions of this title and the collection of taxes and other revenues under this title.

(b) A person who does not comply with a rule made under this section forfeits to the state an amount of not less than \$25 nor more than \$500. Each day on which a failure to comply occurs or continues is a separate violation.

(c) If a forfeiture is not paid, the attorney general shall file suit to recover the forfeiture in a court of competent jurisdiction in Travis County or in any other county where venue lies.

(d) Any other provision of this code that imposes a different penalty for the violation of a comptroller's rule made for the enforcement or collection of a specific tax imposed by this title prevails over the penalty provided by this section.

[Acts 1981, 67th Leg., p. 1495, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 111.003. Comptroller's Investigations

(a) On the governor's request, the comptroller shall:

(1) investigate the books and accounts of assessing and collecting officers of the state and other officers or persons receiving, disbursing, or possessing public funds;

(2) perform other duties and make investigations in relation to public funds as requested by the governor; and

(3) investigate any state institution and its policies, management, and operation, including the fiscal affairs and the conduct and efficiency of any state employee of the institution.

(b) The comptroller shall report to the governor the results of an investigation requested under Subsection (a) of this section. The report must be written and include:

(1) a description of each violation of the revenue laws;

(2) a description of the failure, if any, to enforce revenue laws;

(3) the name of each person reasonably believed to have committed a violation or to have been guilty of nonfeasance; and

(4) if a state institution is investigated, a description of the expenditures of the institution and of all sums of money due the state, the ascertainment and collection of which does not devolve upon other officers of the state under existing law.

(c) A person connected with the public service shall submit all books, records, and accounts to the comptroller without delay on the request of the comptroller when conducting an investigation under Subsection (a) of this section.

(d) On the receipt of a report that indicates a violation of revenue laws or neglect of duty, the governor shall notify the attorney general, who shall institute criminal and civil proceedings in the name of the state against persons accused of a violation or neglect of duty.

(e) The comptroller may at any time examine and investigate the expenditure of appropriated money for a state institution or for any other purpose or for improvements made by the state on state property or money received and disbursed by any board authorized to receive and disburse state money. The comptroller shall investigate any state institution when required by information coming to his own knowledge.

[Acts 1981, 67th Leg., p. 1495, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.004. Power to Examine Records and Persons**

(a) For the purpose of carrying out the terms of this title the comptroller may examine at the principal or any other office in the United States of any person, firm, agent, or corporation permitted to do business in this state, all books, records and papers and also any of their officers or employees under oath.

(b) If any person refuses to permit an examination or answer any question authorized by Subsection (a) of this section, the comptroller may certify the fact of the refusal to the secretary of state, who shall immediately forfeit the charter or the permit to do business of the person until the examination as required is completed.

(c) No charge may be made by the comptroller to examine a book, record, or paper or to question an officer or employee.

(d) The comptroller's authority to examine books, records, and papers under this chapter extends to all books, records, papers, and other objects which the comptroller determines are necessary for conducting a complete examination under this title.

[Acts 1981, 67th Leg., p. 1496, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.0041. Records**

(a) Any taxpayer who is required by this title to keep records shall keep those records open to inspection by the comptroller, the attorney general, or the authorized representatives of either of them for four years.

(b) This section prevails over any other conflicting provision of this title except Section 191.024(b) of this code.

[Acts 1981, 67th Leg., p. 1496, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.0042. Sampling in Auditing; Projecting Assessments**

(a) Repealed by Acts 1983, 68th Leg., p. 982, ch. 234, § 1, eff. May 25, 1983.

(b) Sampling auditing methods are appropriate if:

(1) the taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical;

(2) the taxpayer's records are inadequate or insufficient, so that a competent audit for the period in question is not otherwise possible; or

(3) the cost of an audit of all detailed records to the taxpayer or to the state will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

(c) Before using a sample technique to establish a tax liability, the comptroller or his designee must notify the taxpayer in writing of the sampling procedure to be used.

(d) The sample must reflect as nearly as possible the normal conditions under which the business was operated during the period to which the audit applies. If a taxpayer can demonstrate that a transaction in a sample period is not representative of the taxpayer's business operations, the transaction shall be eliminated from the sample and be separately assessed in the audit. If records are inadequate to reflect accurately the business operations of the taxpayer, the comptroller or his designee shall determine the best information available and base his audit report on that information.

(e) If the taxpayer demonstrates that any sampling method used by the comptroller was not in accordance with generally recognized sampling techniques, the audit will be dismissed as to that portion of the audit established by projection based upon the sampling method, and a new audit may be performed.

[Acts 1981, 67th Leg., p. 1496, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 982, ch. 234, § 1, eff. May 25, 1983].

**§ 111.0043. General Audit and Prehearing Powers**

(a) In this section:

(1) "Person" includes an individual, corporation, partner, partnership, officer, or director of a corporation, joint venture, trust, trustee, agent, or association.

(2) "Taxpayer" means the person whose tax obligation the comptroller is seeking to determine.

(b)(1) Before a determination of or a hearing on a taxpayer's tax obligation, if any, the comptroller may issue a subpoena addressed to the sheriff or constable of any county in this state to require any person who the comptroller determines may provide assistance in the examination of a taxpayer's tax obligation to appear at the place and time stated in the subpoena for the taking of his oral deposition before an official authorized to take depositions. The subpoena may require the person to produce at the time of the deposition books, documents, records, papers, accounts, and other objects as may be specified by the comptroller. The subpoena must include a statement setting out the reason why the requested material is needed.

(2) The deposition shall be taken in the county of the person's residence or in the county where the person is employed or regularly transacts

business. The subpoena shall specify that the person shall remain in attendance from day to day until the deposition is begun and completed.

(3) The officer taking the oral deposition may not sustain objections to any of the testimony taken or exclude any of it.

(4) When the testimony is fully transcribed, the deposition shall be submitted to the person for examination and read to or by the person, unless the examination and reading are waived in writing by the person and by the comptroller. However, if the person is represented by an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer. If the person does not appear and examine, read, and sign the deposition within 10 days after the mailing of the notice, the deposition shall be returned and may be used as fully as though signed. The officer shall enter on the deposition any changes in form or substance that the person desires to make and a statement of the reasons given by the person for making them. The deposition shall then be signed by the person, unless the person and the comptroller by stipulation waive the signing or the person is ill, cannot be found, or refuses to sign. If the deposition is not signed by the person, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the person or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(5) The deposition shall be returned to the comptroller by the official taking the deposition either by mail or by delivering it in person.

(c) Before a determination of or a hearing on a taxpayer's tax obligation, if any, the comptroller may:

(1) issue a subpoena addressed to the sheriff or constable of any county in this state to require any person to produce at the place and time stated in the subpoena books, documents, records, papers, accounts, and other objects that the comptroller determines may assist in an examination of a person's tax obligation;

(2) issue an order to a person to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation on the property that may be material to any matter involved in the examination; the order must specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe any terms and conditions that are just;

(3) copy or conduct a complete examination of books, documents, records, papers, accounts, and other objects that are produced as a result of the subpoenas or orders specified in this section; and

(4) serve or have served by his designated agent any subpoena or order issued under this section by delivering a copy of the subpoena to the person.

(d) A person, other than the taxpayer, who is subpoenaed to give a deposition or to produce books, records, papers, or other objects under the authority of this section is entitled to receive after presentation of a voucher sworn by the person and approved by the comptroller:

(1) mileage of 20 cents a mile, or a greater amount as prescribed by agency rule, for going to and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of \$20 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a deponent.

(e) If a person fails to comply with a subpoena or order issued under this section, the comptroller may:

(1) acting through the attorney general, bring suit to enforce the subpoena or order in a district court of Travis County; the court, if it determines that good cause exists for the issuance of a subpoena or order, shall order the compliance with the requirements of the subpoena or order; failure to obey the order of the court may be punishable by the court as contempt;

(2) use records, books, papers, and other documents obtained or depositions taken under this section only in an administrative hearing of the comptroller or a judicial proceeding brought by or against the comptroller; the information may be made available to the federal government or to another state under an exchange agreement; and

(3) delegate his authority to issue subpoenas or orders and to participate in the taking of depositions as specified in this section to any attorney employed by him.

(f) If a foreign corporation doing business in this state has such contact with this state that it becomes subject to the taxes administered and collected by the comptroller and fails to appoint or maintain a registered agent in this state, or if the registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of the corporation and may be served with any subpoena or other order issued under this section in the manner provided for service of process in Article 8.10, Texas Business Corporation Act, as amended.

(g) Any person, including the taxpayer, shall be entitled to obtain upon request a copy of any statement he has previously made concerning the examination or its subject matter and which is in the possession, custody, or control of the comptroller. Copies of statements made to the comptroller by any person which are used as a basis for an assessment against a taxpayer may be obtained by the

taxpayer upon request. If the request is refused, the person may move for an agency order under this subsection. For the purpose of this section, a statement previously made is:

- (1) a written statement signed or otherwise adopted or approved by the person making it; or
- (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

[Acts 1981, 67th Leg., p. 1497, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.0044. Special Procedures for Third-Party Orders and Subpoenas**

(a)(1) If any order or subpoena described in Section 111.0043 of this code is served on any person who is a third-party recordkeeper, and the order or subpoena requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person ordered or subpoenaed) who is identified in the description of the record contained in the order or subpoena, then notice of the order or subpoena shall be given to any person so identified within three days of the day on which the service on the third-party recordkeeper is made but no later than the 14th day before the day fixed in the order or subpoena as the day upon which the records are to be examined. The notice shall be accompanied by a copy of the order or subpoena which has been served and shall contain directions for staying compliance with the order or subpoena under Subsection (b)(2) of this section.

(2) The notice shall be sufficient if, on or before the third day, the notice is delivered in hand to the person entitled to notice or is mailed by certified or registered mail to the last mailing address of the person or, in the absence of a last known address, is left with the person ordered or subpoenaed. If the notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice.

(3) For purposes of this section, the term "third-party recordkeeper" means:

(A) a mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under federal or state law, a bank as defined in Section 581 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 581), or any credit union within the meaning of Section 501(c)(14)(A), Internal Revenue Code;

(B) any consumer reporting agency as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f));

(C) any person extending credit through the use of credit cards or similar devices; and

(D) any broker as defined in Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

(4) Subsection (a)(1) of this section may not apply to an order or subpoena served on the person with respect to whose liability the order or subpoena is issued or an officer or employee of the person; or any order or subpoena to determine whether or not records of the business transactions or affairs of an identified person have been made or kept; or any order or subpoena described in Subsection (e) of this section.

(5) An order or subpoena to which this subsection applies shall identify the taxpayer to whom the order or subpoena relates and to whom the records pertain and shall provide other information to enable the person ordered or subpoenaed to locate the records required under the order or subpoena.

(b)(1) Notwithstanding any other law or rule of law, a person who is entitled to notice of an order or subpoena under Subsection (a) of this section shall have the right to intervene in any proceeding with respect to the enforcement of the order or subpoena under Subsection (e) of Section 111.0043 of this code.

(2) Notwithstanding any other law or rule of law, a person who is entitled to notice of an order or subpoena under Subsection (a) of this section shall have the right to stay compliance with the order or subpoena if, not later than the 14th day after the day the notice is given in the manner provided in Subsection (a)(2) of this section:

(A) notice in writing is given to the person ordered or subpoenaed not to comply with the order or subpoena;

(B) a copy of the notice not to comply with the order or subpoena is mailed by registered or certified mail to the person and to the office the comptroller directs in the notice referred to in Subsection (a)(1) of this section; and

(C) suit is filed against the comptroller in a district court of Travis County to stay compliance with the order or subpoena.

(c) No examination of any records required to be produced under an order or subpoena as to which notice is required under Subsection (a) of this section may be made:

(1) before the expiration of the 14-day period allowed for the notice not to comply under Subsection (b)(2) of this section; or

(2) when the requirements of Subsection (b)(2) of this section have been met, except in accordance with an order issued by a district court of Travis County authorizing examination of the records or with the consent of the person staying compliance.

(d) If any person takes any action as provided in Subsection (b) of this section and such person is the person with respect to whose liability the order or subpoena is issued under Section 111.0043 of this code (or is the agent, nominee, or other person

acting under the direction or control of such person), then the running of any period of limitations under Subchapter D of this chapter<sup>1</sup> with respect to the person shall be suspended for the period during which a proceeding and appeals of the proceeding with respect to the enforcement of such order are pending.

(e) Any order or subpoena issued under Section 111.0043 of this code that does not identify the person with respect to whose liability the order is issued may be served only after a court proceeding in which the comptroller establishes that:

(1) the order relates to the investigation of a particular person or ascertainable group or class of persons;

(2) there is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of state law; and

(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the order is issued) is not readily available from other sources.

(f) In the case of an order or subpoena issued under Section 111.0043 of this code, the provisions of Subsections (a)(1) and (b) of this section may not apply if, upon petition by the comptroller, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(g)(1) A district court of Travis County has jurisdiction to hear and determine proceedings brought under Subsection (e) or (f) of this section. The determinations required to be made under Subsections (e) and (f) of this section shall be ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order that may be appealed.

(2) Except for cases the court considers of greater importance, a proceeding brought for the enforcement of any order, or a proceeding under this section, and appeals, take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

(h) The comptroller shall by rule establish the rates and conditions for payments to reimburse reasonably necessary costs directly incurred by third-party recordkeepers in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by order or subpoena upon request of the comptroller. The reimbursement shall be in addition to mileage and

fees paid under Subsections (d)(1) and (d)(2) of Section 111.0043 of this code.

[Acts 1981, 67th Leg., p. 1499, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 111.201 et seq.

**§ 111.005. Governmental Entities to Cooperate**

Each department, officer, and employee of the state or of a local governmental entity shall cooperate with and give reasonable assistance and information to the comptroller when performing authorized duties.

[Acts 1981, 67th Leg., p. 1502, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.006. Confidentiality of Information**

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

(1) a federal tax return or federal tax return information required to have been submitted to the comptroller with a state tax return or report; and

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

(b) All information made confidential in this title may not be subject to subpoena directed to the comptroller or the attorney general except in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party.

(c) The comptroller or the attorney general may use information or records made confidential by provisions of this title to enforce any provisions of this title or may authorize their use in a judicial or an administrative proceeding in which this state, another state, or the federal government is a party.

[Acts 1981, 67th Leg., p. 1502, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.007. Criminal Penalties for Disclosing Federal Tax Information**

(a) The comptroller, a person who formerly held the office of comptroller, or an employee or former employee of the comptroller commits an offense if he discloses in a manner unauthorized by law a federal tax return or federal tax return information that is required to be submitted to the comptroller by any person.

(b) An offense under this section is a misdemeanor or punishable by a fine of not more than \$1,000 or

by confinement in jail for not more than one year, or by both a fine and confinement.

[Acts 1981, 67th Leg., p. 1502, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.008. Deficiency Determination

(a) If the comptroller is not satisfied with a tax report or the amount of the tax required to be paid to the state by a person, the comptroller may compute and determine the amount of tax to be paid from information contained in the report or from any other information available to the comptroller.

(b) On making a determination under this section, the comptroller shall notify the person against whom a determination is made of the determination. The notice may be given by mail or by personal service.

(c) If the notice is given by mail, it shall be addressed to the taxpayer or other person at the taxpayer's address as it appears in the records of the comptroller. Service by mail is complete when the notice is deposited in a U.S. Post Office.

[Acts 1981, 67th Leg., p. 1502, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.009. Redetermination

(a) A person having a direct interest in a determination may petition the comptroller for a redetermination.

(b) A petition for redetermination must be filed before the expiration of 30 days after the date on which the service of the notice of determination is completed or the redetermination is barred. If a petition for redetermination is not filed before the expiration of the period provided by this subsection, the determination is final on the expiration of the period.

(c) If the petition requests a hearing on the redetermination, the person filing the petition is entitled to a hearing and to receive notice of the hearing at least 20 days before the day of the hearing.

(d) An order or decision of the comptroller on a petition for redetermination becomes final 15 days after service on the petitioner of the notice of the order or decision.

[Acts 1981, 67th Leg., p. 1503, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.010. Suit to Recover Taxes

(a) The attorney general shall bring suit in the name of the state to recover delinquent state taxes, tax penalties, and interest owed to the state.

(b) This section applies to state taxes imposed by this title or by other laws not included in this title but does not apply to the state ad valorem tax on property.

(c) Venue for and jurisdiction of a suit arising under this section is conferred upon the courts of Travis County.

(d) The state is entitled to interest at the rate of 10 percent a year on the amount of a judgment for the state beginning on the day the judgment is signed and ending on the day the judgment is satisfied.

[Acts 1981, 67th Leg., p. 1503, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 519, ch. 107, § 2, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies to judgments rendered on or after that date."

#### § 111.011. Injunction to Halt Business Activities

(a) If a person engaged in a business the operation of which involves the receipt, collection, or withholding of a tax imposed by this title fails to file a report or pay the tax as required by this title, the attorney general may bring suit for an injunction prohibiting the person from continuing in that business until the report is filed and the tax is paid.

(b) The venue for a suit under this section is in Travis County.

[Acts 1981, 67th Leg., p. 1503, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.012. Security for the Payment of Taxes

(a) If the comptroller finds that a tax imposed by this title is insecure, the comptroller may require a taxpayer who is delinquent in the payment of the tax to provide security for the payment of taxes.

(b) The security may consist of:

- (1) a cash deposit filed with the comptroller;
- (2) a surety bond; or
- (3) other security as permitted by the comptroller.

(c) The amount and form of the security shall be set by the comptroller, except that the amount may not be more than double the amount of taxes that the comptroller estimates will be due from the taxpayer during the succeeding 12 months.

(d) The comptroller shall give notice to a taxpayer from whom security is required under this section.

(e) If a taxpayer does not furnish security to the comptroller as required by the comptroller before the expiration of 10 days following the day on which notice is given, the comptroller may bring suit for an order enjoining the taxpayer from engaging in business until the security is furnished. Venue for a suit under this section is in Travis County.

[Acts 1981, 67th Leg., p. 1503, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.013. Evidence: Occupation Tax Claims

In a suit involving the establishment or collection of an occupation tax, a claim showing the amount of tax due the state and certified by the comptroller or the chief clerk of the comptroller is admissible as

evidence. When admitted, the claim is prima facie evidence of its contents.

[Acts 1981, 67th Leg., p. 1504, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.014. Evidence: Copies of Graphic Matter**

(a) A copy of graphic matter is admissible, without further proof, in a judicial or administrative proceeding concerning the administration or enforcement of a tax imposed by this title if:

(1) the copy or information contained in the copy is relevant;

(2) the copy is a reproduction made by a photographic, photostatic, magnetic, or other process that accurately duplicates or forms a durable medium for accurately reproducing the original matter or information contained in the original matter; and

(3) the graphic matter was kept or recorded by the comptroller in the performance of official functions.

(b) "Graphic matter" means a memorandum, entry, report, or other document, a record of information contained in a memorandum, entry, report, or other document, or a record of an action taken by the comptroller.

(c) The admissibility of a copy of graphic matter as allowed under this section does not affect the admissibility of the original matter or other competent evidence offered to show the incorrectness of the copy or of information reflected in the copy.

[Acts 1981, 67th Leg., p. 1504, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.015. Remedies Cumulative**

The rights, powers, remedies, liens, and penalties provided by this title are cumulative of other rights, powers, remedies, liens, and penalties for the collection of taxes provided by this title and by other law.

[Acts 1981, 67th Leg., p. 1504, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides: "Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides: "(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

**§ 111.016. Payment to the State of Tax Collections**

Any person who receives or collects a tax or any money represented to be a tax from another person is liable to the state for the full amount of the taxes plus any accrued penalties and interest on the taxes.

[Acts 1981, 67th Leg., p. 1504, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 111.017 to 111.050 reserved for expansion]

**SUBCHAPTER B. TAX REPORTS AND PAYMENTS**

**§ 111.051. Reports and Payments; Due Dates**

(a) The comptroller may set the date for filing a report for and making a payment of a tax imposed by this title.

(b) A date set by the comptroller under this section prevails over a different date prescribed by this title for the filing of a report for or the payment of a tax, except that the comptroller may not set a report or payment date for the state sales and use tax that conflicts with the dates prescribed by Chapter 151 of this code.

[Acts 1981, 67th Leg., p. 1504, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.052. Form of Report**

(a) The comptroller may revise the form of a report required under this title to eliminate specific information that may be required by any other provision of this title.

(b) Information that is no longer required because of a revision under Subsection (a) of this section may be required again at any time by the comptroller.

[Acts 1981, 67th Leg., p. 1504, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.053. Filing Dates: Weekends and Holidays**

If the date on which a report or payment is due falls on a Saturday, Sunday, or legal holiday, the next day that is not a Saturday, Sunday, or legal holiday becomes the due date.

[Acts 1981, 67th Leg., p. 1505, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.054. Timely Filing: Mail Delivery**

(a) If a tax payment or a report is placed in a U.S. Post Office or in the hands of a common or contract carrier properly addressed to the comptroller on or before the date the payment or report is required to be made or filed, the payment or report is made or filed on time.

(b) The receipt mark of a contract or common carrier or the postmark on a tax payment or report is prima facie evidence of the date on which the payment or report was delivered to a carrier or the post office. The comptroller or the person making the payment or filing the report may show by competent evidence that the actual date of delivery to the carrier or post office differs from the receipt mark or postmark.

(c) The comptroller may refund or issue credits for penalties and interest paid solely as a result of returns or tax payments timely mailed but post-marked after the required filing date.

[Acts 1981, 67th Leg., p. 1505, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.055. Timely Filing: Diligence

A person who files a report or makes a tax payment complies with the filing requirements for timeliness if the person exercises reasonable diligence to comply and through no fault of the person the report is not filed or the payment is not made on time.

[Acts 1981, 67th Leg., p. 1505, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.056. Filing Within 10 Days: Penalty and Interest

If a report is filed or a tax payment is made before the expiration of 10 days after the date on which the report or payment is due and if the report as originally filed shows the correct amount of the tax due or the amount of the payment is for the correct amount due, no assessment for penalty or interest may be made solely on the grounds of late filing after the expiration of 90 days after the date the report was required to be filed or the payment required to be made.

[Acts 1981, 67th Leg., p. 1505, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.057. Extension for Filing Report

(a) The comptroller may grant a reasonable extension of time, not to exceed 45 days, for the filing of a report required by this title.

(b) To qualify for an extension of time under this section, the person required to file a report must make a request for the extension to the comptroller and remit not less than 90 percent of the amount of the tax estimated to be due on or before the filing date as required by other provisions of this title. The request must be in writing and include the reason an extension is needed.

[Acts 1981, 67th Leg., p. 1505, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.058. Filing Extension Because of Natural Disaster

(a) The comptroller may grant to a person whom the comptroller finds to be a victim of a natural disaster an extension of not more than 90 days to

make or file a return or pay a tax imposed by this title.

(b) The person owing the tax may file a request for an extension at any time before the expiration of 90 days after the original due date.

(c) If an extension under this section is granted, interest on the unpaid tax does not begin to accrue until the day after the day on which the extension expires, and tax penalties are assessed and determined as though the last day of the extension were the original due date.

[Acts 1981, 67th Leg., p. 1505, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.059. Oath Not Required

A report, return, declaration, claim for refund, or other document required or permitted to be filed with the comptroller is not required to be made or submitted under oath, verification, acknowledgment, or affirmation.

[Acts 1981, 67th Leg., p. 1506, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.060. Interest on Delinquent Tax

(a) The yearly interest rate on all delinquent taxes imposed by this title is 10 percent, except that no interest accrues on the taxes imposed by Chapter 154 of this code.

(b) Except as provided by Subsection (c) of this section, delinquent taxes draw interest beginning 60 days from the date due.

(c) Subsection (b) of this section does not apply to the taxes imposed by Chapters 152 and 211 of this code.

[Acts 1981, 67th Leg., p. 1506, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 450, ch. 93, § 1, eff. Sept. 1, 1983.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides:

"(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

[Sections 111.061 to 111.100 reserved for expansion]



SUBCHAPTER C. SETTLEMENTS,  
REFUNDS, AND CREDITS

§ 111.101. Settlement Before Redetermination

(a) After the comptroller examines a taxpayer's records and before a petition for redetermination of the tax is filed, the comptroller may settle a claim for a tax, penalty, or interest imposed by this title if the cost of collection of the amount due would exceed the amount of tax due and if the amount due is not more than \$300.

(b) A settlement under this section is not effective unless it is approved by the assistant comptroller for legal services.

[Acts 1981, 67th Leg., p. 1506, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 111.102. Settlement on Redetermination

As a part of a redetermination order, the comptroller may settle a claim for a tax, penalty, or interest imposed by this title if:

(1) the cost of collection of the amount of tax due would exceed the amount of tax due and the amount of tax due is not more than \$1,000;

(2) collection of the amount of tax due would make the taxpayer insolvent and the taxpayer has submitted to the comptroller all financial records, including income tax reports and an inventory of all property owned wherever located; or

(3) the taxpayer is insolvent, is in liquidation, or has ceased to do business and:

(A) the taxpayer has no property that may be seized by the courts of this or another state; or

(B) the value of the taxpayer's property is less than the amount of tax due and the amount of debts against the property.

[Acts 1981, 67th Leg., p. 1506, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 111.103. Settlement of Penalty and Interest Only

(a) The comptroller may settle a claim for a tax penalty or interest on a tax imposed by this title if the taxpayer exercised reasonable diligence to comply with the provisions of this title.

(b) A settlement under this section is not effective unless it is approved by the assistant comptroller for legal services.

[Acts 1981, 67th Leg., p. 1507, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 111.104. Refunds

(a) If the comptroller finds that an amount of tax, penalty, or interest has been unlawfully or erroneously collected, the comptroller shall credit the amount against any other amount when due and payable by the taxpayer from whom the amount

was collected. The remainder of the amount, if any, may be refunded to the taxpayer from money appropriated for tax refund purposes.

(b) A tax refund claim may be filed with the comptroller by the person who paid the tax or by the person's attorney, assignee, or other successor.

(c) A claim for a refund must:

(1) be written;

(2) state the grounds on which the claim is founded; and

(3) be filed before the expiration of the applicable limitation period as provided by this code or before the expiration of six months after a jeopardy or deficiency determination becomes final, whichever period expires later.

(d) A refund claim for an amount of tax that has been found due in a jeopardy or deficiency determination is limited to the amount of tax, penalty, and interest and to the tax payment period for which the determination was issued. The failure to file a timely tax refund claim is a waiver of any demand against the state for an alleged overpayment.

(e) This section applies to all taxes and license fees collected or administered by the comptroller, except the state property tax.

(f) No taxes, penalties, or interest may be refunded to a person who has collected the taxes from another person unless the person has refunded all the taxes and interest to the person from whom the taxes were collected.

[Acts 1981, 67th Leg., p. 1507, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides:

"(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

§ 111.105. Tax Refund: Hearing

(a) A person claiming a refund under Section 111.104 of this code is entitled to an oral hearing on the claim if the person requests a hearing. The person is entitled to 20 days' notice of the time and place of the hearing.

(b) A decision of the comptroller on a claim for a refund becomes final 15 days after it is issued.

(c) A tax refund claimant who is dissatisfied with the decision on the claim is entitled to file a motion for rehearing.

(d) A motion for rehearing on a tax refund claim must be written and assert each specific ground of error.

[Acts 1981, 67th Leg., p. 1507, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 111.106. Interest on Refund or Credit

In a comptroller's final decision on a claim for refund or in an audit, interest shall be allowed at the rate of 10 percent a year on the amount found to be erroneously paid from 60 days after the date of payment or the due date of the tax report, whichever is later, to the date of allowance of credit on account of the comptroller's final decision or audit or to a date within 10 days prior to the date of the refund warrant, the date to be determined by the comptroller; except that a credit taken by a taxpayer on his return does not accrue interest.

[Acts 1981, 67th Leg., p. 1507, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides:

"(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

#### § 111.107. When Refund or Credit is Permitted

A person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 of this code<sup>1</sup> and the refund is made or the credit is issued under a court order;

(2) under Article 111.104 of this code; or

(3) under Chapter 153 of this code.

[Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982.]

1 Section 112.051 et seq.

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides:

"(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

#### § 111.108. Recovery of Refund or Credit

The comptroller may recover an amount of refund erroneously paid or an amount of credit erroneously allowed in a jeopardy or deficiency determination issued within four years after the date of refund or credit.

[Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides:

"(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

[Sections 111.109 to 111.200 reserved  
for expansion]

SUBCHAPTER D. LIMITATIONS

§ 111.201. Assessment Limitation

No tax imposed by this title may be assessed after four years from the date that the tax becomes due and payable.

[Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(l) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides:

"Sections 1 through 8 of S.B. No. 371, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 102], are repealed. Section 10 of S.B. No. 371, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 371 in the same manner that Section 10 of S.B. No. 371 applies to the provisions of S.B. No. 371."

Section 10 of Acts 1981, 67th Leg., p. 243, ch. 102, eff. Aug. 31, 1981, provides:

"The amendment by this Act in narrowing the period of limitations for collection of tax does not apply to the estates of persons who died prior to the effective date of this Act."

§ 111.202. Suit Limitation

At any time within three years after a deficiency or jeopardy determination has become due and payable or within three years after the last recording of a lien, the comptroller may bring an action in the courts of this state, or any other state, or of the United States in the name of the people of the State of Texas to collect the amount delinquent together with penalties and interest.

[Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982.]

For provisions as to application of 1981 amendment of article from which this section was derived, see note under § 111.201.

§ 111.203. Agreements to Extend Period of Limitation

(a) Before the expiration of the periods prescribed in Sections 111.104, 111.201, and 111.202 of this code for the filing of a refund claim or for the assessment and collection of any tax imposed by this title, the comptroller and a taxpayer may agree in writing to the filing of a refund claim or to an assessment and collection after that time. The agreement must contain the reasons the comptroller and the taxpayer wish to extend the period. At any time before the expiration of the period agreed on, the refund may be made, the tax may be assessed and collected, or an action may be commenced in any court to collect the amount delinquent.

(b) The extended period agreed on under Subsection (a) of this section may be extended by subsequent agreements made before the expiration of the extended period. All subsequent agreements must set forth the reasons for extending the period.

(c) No single extension agreement may be for a period of more than 24 months from the expiration date of the period being extended.

(d) The period for filing a refund claim or for assessment and collection of a tax may be extended if:

(1) without an extension, there might occur a revenue loss to the state;

(2) either the taxpayer or the comptroller, despite good faith efforts, requires more time to prepare for or complete the audit;

(3) without an extension, circumstances beyond the control of either the comptroller or the taxpayer would make an audit by the comptroller impractical or burdensome for either party; or

(4) an issue of law involved in the audit is awaiting determination in either litigation or an administrative proceeding.

(e) If, during an extended period agreed on under Subsection (a) of this section, the comptroller finds that an amount of tax, penalty, or interest has been unlawfully or erroneously collected, the comptroller shall credit the amount against any other amount then due and payable by the taxpayer from whom the amount was collected. The remainder of the amount if any may be refunded to the taxpayer.

[Acts 1981, 67th Leg., p. 1508, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., pp. 458, 459, ch. 94, §§ 1, 2, eff. May 10, 1983.]

For provisions as to application of 1981 amendment of article from which this section was derived, see note under § 111.201.

§ 111.204. Beginning of Period of Limitation

In determining the beginning date for a period of limitation provided in this title, the date that a tax is due and payable is the day after the last day on which a payment is required by the chapter of this title imposing the tax.

[Acts 1981, 67th Leg., p. 1509, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 111.205. Exception to Assessment Limitation

The limitation provided by Section 111.201 of this code does not apply and the comptroller may assess a tax imposed by this title at any time if:

(1) with intent to evade the tax, the taxpayer files a false or fraudulent report;

(2) no report for the tax has been filed;

(3) information contained in the report of the tax contains a gross error and the amount of tax due and payable after correction of the error is 25 percent or more greater than the amount initially reported; or

(4) a taxpayer has filed a timely claim for refund with the comptroller; however, the assessment is limited to the period and type of tax for which the refund is sought.

[Acts 1981, 67th Leg., p. 1509, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 459, ch. 94, § 4, eff. May 10, 1983.]

**§ 111.206. Exception to Limitation: Determination Resulting From Administrative Proceeding**

(a) This section applies only to a final determination resulting from:

(1) an administrative proceeding of a local, state, or federal regulatory agency; or

(2) a judicial proceeding arising from an administrative proceeding of a local, state, or federal regulatory agency.

(b) A final determination that affects the amount of liability of a tax imposed by this title shall be reported to the comptroller before the expiration of 60 days after the day on which the determination becomes final. The report must include a detailed statement of the reasons for the difference in tax liability as required by the comptroller.

(c) Notwithstanding the expiration of a period of limitation provided in this title, the comptroller may assess and collect or bring suit for the collection of any tax deficiency, including penalties and interest, resulting from a final determination or from investigation at any time before the expiration of one year after:

(1) the day the report required by Subsection (b) of this section is received, if the report is filed within the 60-day period; or

(2) if the report is not made or is made after the 60-day period, the day the report is received or the day the final determination is discovered, whichever period is the shorter.

(d) If a final determination or investigation results in the taxpayer having overpaid the amount of tax due the state, the comptroller shall refund or issue a credit for the amount of the overpayment at any time during the one-year period during which assessments may be made under Subsection (c) of this section.

(e) This section does not shorten any period of limitation elsewhere provided in this title.

[Acts 1981, 67th Leg., p. 1509, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.207. Tolling of Limitation Period**

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

(1) the period following the date of a tax payment made under protest;

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

(3) the period during which an administrative proceeding is pending before the comptroller for a redetermination of the tax liability.

(b) The suspension of a period of limitation under Subsection (a) of this section applies only to the amount of taxes in issue under Subdivision (1), (2), or (3) of that subsection.

(c) A bankruptcy case commenced under Title 11 of the United States Code suspends the running of the period prescribed by any section of this title for the assessment or collection of any tax imposed by this title until the bankruptcy case is dismissed or closed. After the case is dismissed or closed, the running of the period resumes until finally expired.

(d) In determining the expiration date for filing a refund claim for a tax imposed by this title, the period during which an administrative proceeding is pending before the comptroller for the same period and type of tax is not considered; however, this provision does not authorize the filing of a refund claim for the same transaction or item, for the same type of tax, and for the same time period as a refund claim previously filed and granted or denied in whole or in part by the comptroller.

[Acts 1981, 67th Leg., p. 1510, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 459, ch. 94, § 3, eff. May 10, 1983.]

[Sections 111.208 to 111.250 reserved for expansion]

**SUBCHAPTER E. ASSIGNMENT OF TAX CLAIMS**

**§ 111.251. Assignment on Payment by Third Person**

(a) A person may voluntarily pay to the comptroller the tax, fine, penalty, and interest due for a period of time under this title by another person after the tax becomes due or may pay a judgment for those taxes, and when the tax or judgment is paid, the comptroller may assign all rights, liens, judgments, and remedies of the state to secure and enforce tax payments to the person paying the tax or the judgment.

(b) A person paying a tax or judgment for another under Subsection (a) of this section is subrogated to and succeeds to all rights, liens, judgments, and remedies of the state relating to the enforcement of the taxes paid.

[Acts 1981, 67th Leg., p. 1510, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.252. Notice to Taxpayer**

(a) No assignment under Section 111.251 of this code may be made until after the expiration of 30 days after notice of the assignments is given to the taxpayer from whom the tax is due or against whom the judgment is taken.

(b) Notice of the assignment must be sent by certified mail to the taxpayer at his last known address as shown in the comptroller's records.

[Acts 1981, 67th Leg., p. 1510, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.253. Venue for Enforcement of Assigned Claims**

Venue for the enforcement of an assigned tax claim or judgment under this subchapter by the assignee is governed by the general law establishing venue and not by the special venue provisions of this title.

[Acts 1981, 67th Leg., p. 1510, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.254. Reassignment**

(a) The rights, liens, judgments, and remedies assigned under Section 111.251 of this code may be reassigned by any assignee.

(b) If notice is given as required by Section 111.252 of this code, all rights, liens, judgments, and remedies originally held by the state to enforce and secure the tax claim or judgment pass to each person receiving a reassignment unless the reassignment is expressly limited in writing.

[Acts 1981, 67th Leg., p. 1511, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 111.255. Recording of Assignment**

The assignee of a tax claim or judgment under this subchapter may record the assignment in the state tax lien record book in the office of the county clerk. A recorded assignment shall be indexed to show the names of the assignor and assignee and the date of the assignment.

[Acts 1981, 67th Leg., p. 1511, ch. 389, § 1, eff. Jan. 1, 1982.]

**CHAPTER 112. TAXPAYERS' SUITS**

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Sec.

112.001. Taxpayers' Suits: Jurisdiction.

**SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT**

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**SUBCHAPTER D. SUIT FOR TAX REFUND**

- 112.151. Suit for Refund.

Sec.

- 112.152. Issues in Suit.
- 112.153. Attorney General to Represent Comptroller.
- 112.154. Trial De Novo.
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- 112.156. Res Judicata.

**SUBCHAPTER A. JURISDICTION**

**§ 112.001. Taxpayers' Suits: Jurisdiction**

The courts of Travis County have exclusive, original jurisdiction of a taxpayer suit brought under this chapter.

[Acts 1981, 67th Leg., p. 1512, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 112.002 to 112.050 reserved for expansion]

**SUBCHAPTER B. SUIT AFTER PROTEST PAYMENT**

**§ 112.051. Protest Payment Required**

(a) If a person who is required to pay to any department of the state government an occupation, gross receipts, franchise, license, or other privilege tax or fee contends that the tax or fee is unlawful or that the department may not legally demand or collect the tax or fee, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

(b) The protest must be in writing and must state fully and in detail each reason for recovering the payment.

(c) The protest payment must be made within the period of time set out in Subdivision (3) of Subsection (c) of Section 111.104 of this code for the filing of refund claims.

[Acts 1981, 67th Leg., p. 1512, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 460, ch. 94, § 6, eff. May 10, 1983.]

**§ 112.052. Taxpayer Suit After Payment Under Protest**

(a) A person may bring suit against the state to recover an occupation, gross receipts, franchise, license, or privilege tax or fee required to be paid to the state if the person has first paid the tax under protest as required by Section 112.051 of this code.

(b) A suit under this section must be brought within 90 days after the day the protest payment was made, or the suit is barred; provided that with respect to any tax assessed on an annual basis but which is required to be paid in installments, the protest required by Section 112.051 may be filed with the final annual return and suit for the recovery for any such installment may be filed within 90 days of the time the final annual return is due.

[Acts 1981, 67th Leg., p. 1512, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1373, ch. 283, § 6, eff. Sept. 1, 1983.]

**§ 112.053. Taxpayer Suit: Parties; Issues**

(a) A suit authorized by this subchapter must be brought against the public official charged with the duty of collecting the tax or fee, the treasurer, and the attorney general.

(b) The issues to be determined in the suit are limited to those arising from the reasons expressed in the written protest as originally filed.

[Acts 1981, 67th Leg., p. 1512, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 112.054. Trial De Novo**

The trial of the issues in a suit under this subchapter is de novo.

[Acts 1981, 67th Leg., p. 1512, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 112.055. Class Actions**

(a) In this section, a class action includes a suit brought under this subchapter by at least two persons who have paid taxes under protest as required by Section 112.051 of this code.

(b) In a class action, all taxpayers who are within the same class as the persons bringing the suit, who are represented in the class action, and who have paid taxes under protest as required by Section 112.051 of this code, are not required to file separate suits, but are entitled to and are governed by the decision rendered in the class action.

[Acts 1981, 67th Leg., p. 1512, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 112.056. Additional Protest Payments Before Hearing**

(a) A petitioner shall pay additional taxes when due under protest after the filing of a suit authorized by this subchapter and before the trial. The petitioner may amend the original petition to include all additional taxes paid under protest before five days before the day the suit is set for a hearing or may elect to file a separate suit. No such election shall prevent the court from exercising its power to consolidate or sever suits and claims under the Texas Rules of Civil Procedure.

(b) If a petitioner pays additional taxes under protest after the filing of a suit authorized by this subchapter and before the trial and if the total of the original payment and additional payments exceeds the jurisdictional limitations of the court in which the suit was originally filed, the petitioner may file suit in the proper court of Travis County at any time before the expiration of 90 days following the day the additional taxes that caused the excess in the jurisdictional amount were paid. The court in which a suit is refiled as authorized by this subsection may dispose of those taxes paid under protest more than 90 days before the refiling, if those taxes were included in the original suit.

(c) This section applies to additional taxes paid under protest only if a written protest is filed with

the additional taxes and the protest states the same reason for contending the payment of taxes that was stated in the original protest.

[Acts 1981, 67th Leg., p. 1513, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1374, ch. 283, § 7, eff. Sept. 1, 1983.]

**§ 112.057. Protest Payments During Appeal**

(a) If a person appeals the judgment of a trial court in a suit authorized by this subchapter, the person shall continue to pay additional taxes under protest as the taxes become due during the appeal.

(b) Additional taxes that are paid under protest during the appeal of the suit shall be governed by the outcome of the suit without the necessity of the person filing an additional suit for the additional taxes.

[Acts 1981, 67th Leg., p. 1513, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 112.058. Submission of Protest Payments to Treasurer**

(a) An officer who receives payments made under protest as required by Section 112.051 of this code shall each day send to the treasurer the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(b) The comptroller shall issue a deposit receipt to each state department for the daily total of payments received from each department.

(c) The treasurer shall make and keep a suspense cash book in which deposit receipts are entered.

(d) The treasurer shall, immediately on receipt, place the payments in state depositories bearing interest in the same manner that other funds are required to be placed in state depositories at interest.

(e) The treasurer shall allocate the interest earned on these funds and credit the amount allocated to the suspense account until the status of the funds is finally determined.

[Acts 1981, 67th Leg., p. 1513, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 112.059. Disposition of Protest Payments Belonging to the State**

(a) If a suit authorized by this subchapter is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that a tax payment or a portion of a tax payment made under protest, including the pro rata amount of interest earned on the payment, belongs to the state, the treasurer shall transfer the proper amount from the suspense account to the appropriate state fund by the issuance of a deposit warrant.

(b) Each warrant issued under this section shall be entered in the suspense cash book and the appro-

private fund to which the transfer is made shall be properly credited with the correct amount.

[Acts 1981, 67th Leg., p. 1513, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 112.060. Refund

(a) If a suit under this subchapter results in a final determination that all or part of the money paid under protest was unlawfully demanded by the public official and belongs to the taxpayer, the treasurer shall refund the proper amount, with the pro rata interest earned on that amount, by the issuance of a refund warrant.

(b) A refund warrant shall be styled and designated "tax refund warrant," written and signed by the comptroller, countersigned by the treasurer, and issued from a separate series used only for the purpose of making refunds.

(c) Each tax refund warrant shall be drawn against the suspense account.

(d) The treasurer shall return to the comptroller each tax refund warrant issued, and the comptroller shall deliver it to the person entitled to receive it.

[Acts 1981, 67th Leg., p. 1514, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 112.061 to 112.100 reserved for expansion]

SUBCHAPTER C. INJUNCTIONS

§ 112.101. Requirements Before Injunction

(a) No restraining order or injunction that prohibits the collection of a state tax; license, registration, or filing fee; or statutory penalty assessed for the failure to pay the state tax or fee may be granted in this state or may be granted against a state official or a representative of an official in this state unless the applicant for the order or injunction has first:

(1) paid into the suspense account of the treasurer all taxes, fees, and penalties then due by the applicant to the state; or

(2) filed with the treasurer a good and sufficient bond to guarantee the payment of the taxes, fees, and penalties in an amount equal to twice the amount of the taxes, fees, and penalties then due and that may reasonably be expected to become due during the period the order or injunction is in effect.

(b) The amount of the bond and the sureties on the bond authorized by Subsection (a)(2) of this section must be approved by and acceptable to the judge of the court granting the order or injunction and the attorney general.

(c) The application for the restraining order or injunction must state under the oath of the applicant or the agent or attorney of the applicant that:

(1) the payment of taxes, fees, and penalties has been made as provided by Subsection (a)(1) of this section; or

(2) a bond has been approved and filed as provided by Subsection (a)(2) and Subsection (b) of this section.

[Acts 1981, 67th Leg., p. 1514, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 112.102. Records After Injunction

(a) After the granting of a restraining order or injunction under this subchapter, the applicant shall make and keep a well-bound record book of all taxes accruing during the period that the order or injunction is effective.

(b) The record book is open for inspection by the attorney general and the state officer authorized to enforce the collection of the tax to which the order or injunction applies during the period that the order or injunction is effective and for one year after the date that the order or injunction expires.

(c) The record book must include a record of each purchase, receipt, sale, or other disposition of a commodity, product, material, or article on which the tax is levied or by which the tax is measured.

[Acts 1981, 67th Leg., p. 1515, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 112.103. Reports After Injunction

(a) On each Monday during the period that an order or injunction granted under this subchapter is effective, the applicant shall make and file a report with the state officer authorized to enforce the collection of the tax to which the order or injunction applies.

(b) The report must include the following weekly information:

(1) the amount of the tax accruing;

(2) a description of the total purchases, receipts, sales, and other dispositions of all commodities, products, materials, and articles on which the tax is levied or by which the tax is measured;

(3) the name and address of each person to whom a commodity, product, material, or article is sold or distributed; and

(4) if payment of the tax is evidenced or measured by the sale or use of stamps or tickets, a complete record of all stamps or tickets used, sold, or handled.

(c) The report shall be made on a form prescribed by the state official with whom the report is required to be filed.

[Acts 1981, 67th Leg., p. 1515, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 112.104. Additional Payments or Bond

(a) If an applicant for an order or injunction granted under this subchapter has not filed a bond as required by Section 112.101(a)(2) of this code, the applicant shall on each Monday pay into the suspense account of the treasurer all taxes, fees, and penalties to which the order or injunction applies as

those taxes, fees, and penalties accrue and before they become delinquent.

(b) If the attorney general determines that the amount of a bond filed under this subchapter is insufficient to cover double the amount of taxes, fees, and penalties accruing after the restraining order or injunction is granted, the attorney general shall demand that the applicant file an additional bond.

[Acts 1981, 67th Leg., p. 1515, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 112.105. Dismissal of Injunction

(a) The attorney general or the state official authorized to enforce the collection of a tax to which an order or injunction under this subchapter applies may file in the court that has granted the order or injunction an affidavit stating that the applicant has failed to comply with or has violated a provision of this subchapter.

(b) On the filing of an affidavit authorized by Subsection (a) of this section, the clerk of the court shall give notice to the applicant to appear before the court to show cause why the order or injunction should not be dismissed. The notice shall be served by the sheriff of the county where the applicant resides or by any other peace officer in the state.

(c) The date of the show-cause hearing, which shall be within five days of service of the notice or as soon as the court can hear it, shall be named in the notice.

(d) If the court finds that the applicant failed, at any time before the suit is finally disposed of by the court of last resort, to make and keep a record, file a report, file an additional bond on the demand of the attorney general, or pay additional taxes, fees, and penalties as required by this subchapter, the court shall dismiss the application and dissolve the order or injunction.

[Acts 1981, 67th Leg., p. 1515, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 112.106. Final Dismissal or Dissolution of Injunction

(a) If a restraining order or injunction is finally dismissed or dissolved, the treasurer shall:

(1) if a bond was filed, make demand on the applicant and the applicant's sureties for the immediate payment of all taxes, fees, and penalties due the state; or

(2) if no bond was filed, transfer the amount of taxes, fees, and penalties from the suspense account to the proper fund to which the taxes, fees, and penalties are allocated.

(b) Taxes, fees, and penalties that are secured by a bond and remain unpaid after a demand for payment shall be recovered in a suit by the attorney general against the applicant and the applicant's sureties in a court of competent jurisdiction of Tra-

vis County or in any other court having jurisdiction of the suit.

[Acts 1981, 67th Leg., p. 1516, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 112.107. Refund

If the final judgment in a suit under this subchapter maintains the right of the applicant for a permanent injunction to prevent the collection of the tax, the treasurer shall refund to the applicant the money deposited in the suspense account under this subchapter with the pro rata interest earned on the money.

[Acts 1981, 67th Leg., p. 1516, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 112.108 to 112.150 reserved for expansion]

### SUBCHAPTER D. SUIT FOR TAX REFUND

#### § 112.151. Suit for Refund

(a) A person may sue the comptroller to recover an amount of tax, penalty, or interest that has been the subject of a tax refund claim if the person has:

(1) filed a tax refund claim under Section 111.104 of this code;

(2) filed, as provided by Section 111.105 of this code, a motion for rehearing that has been denied by the comptroller; and

(3) paid any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

(b) The suit must be filed in a district court.

(c) The suit must be filed before the expiration of 30 days after the issue date of the denial of the motion for rehearing or it is barred.

[Acts 1981, 67th Leg., p. 1516, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 112.152. Issues in Suit

(a) The grounds of error contained in the motion for rehearing are the only issues that may be raised in a suit under this subchapter.

(b) The suit applies only to a tax liability period considered in the comptroller's decision.

[Acts 1981, 67th Leg., p. 1516, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 112.153. Attorney General to Represent Comptroller

The attorney general shall represent the comptroller in a suit under this subchapter.

[Acts 1981, 67th Leg., p. 1517, ch. 389, § 1, eff. Jan. 1, 1982.]



**§ 112.154. Trial De Novo**

In a suit under this subchapter, the issues shall be tried de novo as are other civil cases.

[Acts 1981, 67th Leg., p. 1517, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 112.155. Judgment**

(a) The amount of a judgment for the plaintiff shall be credited against any tax, penalty, or interest imposed by this title or by Section 81.111, Natural Resources Code, and due from the plaintiff.

(b) The remainder of the amount of a judgment not credited to a tax, penalty, or interest due shall be refunded to the plaintiff.

(c) The plaintiff is entitled to interest at the rate of 10 percent a year on the amount of a judgment for the plaintiff beginning from the date that the tax was paid until:

- (1) the date that the amount is credited against the plaintiff's tax liability; or
- (2) a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

[Acts 1981, 67th Leg., p. 1517, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides: "Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides: "(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

**§ 112.156. Res Judicata**

The rule of res judicata applies in a suit under this subchapter only if the issues and the tax liability periods in controversy are the same as were decided in a previous final judgment entered in a Texas court of record in a suit between the same parties.

[Acts 1981, 67th Leg., p. 1517, ch. 389, § 1, eff. Jan. 1, 1982.]

Section 39(h) of Acts 1981, 67th Leg., p. 1787, ch. 389, provides: "Sections 1 through 18 of S.B. No. 196, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 20], are repealed. Section 20 of S.B.No. 196, Acts of the 67th, Legislature, Regular Session, 1981, applies to the provisions of Title 2, Tax Code, that incorporate the amendments contained in S.B. No. 196 in the same

manner that Section 20 of S.B. No. 196 applies to the provisions of S.B. No. 196."

Section 20 of Acts 1981, 67th Leg., p. 30, ch. 20, provides:

"(a) This Act takes effect January 1, 1982.

"(b) The amendment by this Act in extending the period of limitations against a claim by the comptroller of public accounts for an erroneously made tax refund or credit does not apply to a claim against which the period of limitation provided by Section (13) of Article 1.11A, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, as in effect immediately before the effective date of this Act, expired before the effective date of this Act.

"(c) Sections 1 through 3 of this Act apply to all taxes erroneously paid for tax periods which are after the effective date of this Act.

"(d) Sections 4 through 18 of this Act apply to all unpaid taxes that are delinquent on the effective date of this Act and that become delinquent after the effective date of this Act."

**CHAPTER 113. TAX LIENS**

**SUBCHAPTER A. FILING AND RELEASE OF STATE TAX LIENS**

- Sec.
- 113.001. Tax Liability Secured by Lien.
  - 113.002. Tax Lien Notice.
  - 113.003. Execution of Documents.
  - 113.004. State Tax Lien Book.
  - 113.005. Duties of County Clerk.
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**SUBCHAPTER B. APPLICATION AND STATUS OF STATE TAX LIENS**

- 113.101. Applicability of Lien Before Filing.
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- 113.103. Applicability of Lien to Financial Institutions.
- 113.104. Preferential Transfers.
- 113.105. Tax Lien; Period of Validity.
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**SUBCHAPTER C. UNIFORM FEDERAL TAX LIEN REGISTRATION ACT**

- 113.201. Place of Filing.
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- 113.203. Duties of Filing Officer.
- 113.204. Fees.
- 113.205. Purpose.
- 113.206. Short Title.

**SUBCHAPTER A. FILING AND RELEASE OF STATE TAX LIENS**

**§ 113.001. Tax Liability Secured by Lien**

(a) All taxes, fines, interest, and penalties due by a person to the state under this title are secured by a lien on all of the person's property that is subject to execution and is owned at the time the lien attaches.

(b) The lien for taxes attaches to all of the property of a person liable for the taxes on the day the tax becomes due and payable.

[Acts 1981, 67th Leg., p. 1518, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.002. Tax Lien Notice

(a) The comptroller shall issue and file a tax lien notice required by this chapter.

(b) A tax lien notice must include the following information:

- (1) the name and address of the taxpayer;
- (2) the type of tax that is owing;
- (3) each period for which the tax is claimed to be delinquent; and
- (4) the amount of tax only due for each period, excluding the amount of any penalty, interest, or other charge.

(c) A tax lien notice may include other relevant information that the comptroller considers proper.

[Acts 1981, 67th Leg., p. 1518, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.003. Execution of Documents

The comptroller may execute, certify, authenticate, or sign any instrument authorized under this chapter to be issued by the comptroller or under the comptroller's authority with a facsimile signature and seal.

[Acts 1981, 67th Leg., p. 1518, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.004. State Tax Lien Book

The county clerk of each county shall provide at the expense of the county a well-bound book, entitled "State Tax Liens," in which notices of state tax liens filed by the comptroller are recorded.

[Acts 1981, 67th Leg., p. 1519, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.005. Duties of County Clerk

(a) On receipt of a tax lien notice from the comptroller, the county clerk shall immediately:

- (1) record the notice in the state tax lien book;
- (2) note on the notice the date and hour of its recording;
- (3) enter in an alphabetical index the name of each person to whom the notice applies, along with the volume and page number of the state tax lien book where the notice is recorded;
- (4) furnish to the comptroller, on a form prescribed by the comptroller, a notice showing that the tax lien notice is recorded and filed, the date and hour of its recording and filing, and the volume and page number of the state tax lien book where the lien is recorded; and
- (5) send the comptroller a statement of the fee due for recording and indexing the lien.

(b) This section prevails over conflicting provisions of other law.

[Acts 1981, 67th Leg., p. 1519, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.006. Effect of Filing Tax Lien Notice

(a) The filing and recording of a tax lien notice constitutes a record of the notice.

(b) One tax lien notice is sufficient to cover all taxes of the same nature that may accrue after the filing of the notice.

[Acts 1981, 67th Leg., p. 1519, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.007. Evidence of Tax Payment

A payment in whole or in part of a tax secured by a state tax lien may be evidenced by a receipt, acknowledgment, or release signed by an authorized representative of the state agency that filed the lien.

[Acts 1981, 67th Leg., p. 1519, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.008. Release of Lien on Specific Property

(a) With the approval of the attorney general, the comptroller may release a state tax lien on specific real or personal property when payment of the reasonable cash market value of the property is made to the comptroller.

(b) The value of the property to be released shall be determined in the manner prescribed by the comptroller.

[Acts 1981, 67th Leg., p. 1519, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.009. Filing of Tax Lien Release

(a) A tax lien release shall be filed in the office of the county clerk in the manner that other releases are filed. On the filing of a release, the county clerk shall release the state tax lien filed with the clerk in accordance with the regulations of the clerk's office.

(b) The county clerk may send the comptroller a statement of the customary fee due for the filing and indexing of the release of the tax lien notice, and the comptroller may pay the fee charged. The comptroller may collect the amount of the fee paid under this subsection by the comptroller from the taxpayer against whom the lien was filed.

[Acts 1981, 67th Leg., p. 1519, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 460, ch. 94, § 5, eff. May 10, 1983.]

#### § 113.010. Release of Lien by Assignee

A release in whole or in part by an assignee of the state's claim for a tax and of its tax lien or of a judgment for a tax secured by a tax lien may be filed and recorded with the county clerk for the same fee and in the same manner as a release by

the comptroller or by another state agency that may file a notice of a lien in the state tax lien records.  
[Acts 1981, 67th Leg., p. 1520, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 113.011. Liens Filed With Highway Department**

The comptroller shall furnish to the State Department of Highways and Public Transportation each release of a tax lien filed by the comptroller with that department.

[Acts 1981, 67th Leg., p. 1520, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 113.012 to 113.100 reserved for expansion]

**SUBCHAPTER B. APPLICATIONS AND STATUS OF STATE TAX LIENS**

**§ 113.101. Applicability of Lien Before Filing**

(a) No lien created by this title is effective against a person listed in Subsection (b) of this section who acquires a lien, title, or other right or interest in property before the filing, recording, and indexing of the lien:

- (1) on real property, in the county where the property is located; or
- (2) on personal property, in the county where the taxpayer resided at the time the tax became due and payable or in the county where the taxpayer filed the report.

(b) This section applies to a bona fide purchaser, mortgagee, holder of a deed of trust, judgment creditor, or any other person who acquired the lien, title, or right or interest in the property for bona fide consideration.

[Acts 1981, 67th Leg., p. 1520, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 113.102. Applicability of Lien to Merchandise Purchase**

No lien created by this title is effective against a bona fide purchaser for value of goods, wares, or merchandise daily exposed for sale in the regular course of business if the purchase and actual or constructive possession of the goods, wares, or merchandise is completed before the goods, wares, or merchandise are seized under a valid legal writ or other lawful process.

[Acts 1981, 67th Leg., p. 1520, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 113.103. Applicability of Lien to Financial Institutions**

(a) A bank or savings and loan institution is not required to recognize the claim of the state to a deposit or to withhold payment of a deposit to a depositor or to the depositor's order unless the bank or institution has been served by the comptroller with a notice of the state's claim.

(b) Notice of a state claim must be in writing and be served by certified mail to the bank or institution or served personally on the president or any vice-president, cashier, or assistant cashier of the bank or institution.

[Acts 1981, 67th Leg., p. 1520, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 113.104. Preferential Transfers**

(a) The comptroller may recover in a suit brought in Travis County by the attorney general the property or the value of property transferred in a preferential transfer.

(b) The transfer of property or an interest in property by a person who at the time of the transfer is insolvent and has received or withheld money as a tax under this title or who is delinquent in the payment of a tax imposed by this title is a preferential transfer if the transfer occurred during the six-month period before the date of the filing of a tax lien notice against the transferor as permitted by this chapter and if the transfer is made with intent to defraud the state. The transfer of the property or the interest in property without adequate and sufficient consideration creates a rebuttable presumption that the transfer was made with intent to defraud the state. A transfer with sufficient consideration creates a rebuttable presumption that the transfer was not made with intent to defraud the state.

(c) All property subject to execution of a transferee in a preferential transfer is subject to a prior lien in favor of the state to secure the recovery of the value of the property transferred in a preferential transfer.

(d) The remedies provided by this section are cumulative of other remedies of the comptroller as a creditor.

[Acts 1981, 67th Leg., p. 1520, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 113.105. Tax Lien; Period of Validity**

The state tax lien on personal property and real estate continues until the taxes secured by the lien are paid.

[Acts 1981, 67th Leg., p. 1521, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 113.106. Lien; Suit to Determine Validity**

(a) In an action to determine the validity of a state tax lien, the lien shall be:

- (1) perpetuated and foreclosed; or
- (2) nullified.

(b) If a lien is perpetuated and foreclosed, no further action or notice on the judgment is required, and the notice of the state tax lien on record continues in effect.

(c) If all or part of a lien is nullified, a certified copy of the judgment may be filed with the county clerk of the county where the tax lien notice was

filed and may be recorded in the same manner as a release by the comptroller.

(d) Execution, order for sale, or other process for the enforcement of the lien may be issued on the judgment at any time.

[Acts 1981, 67th Leg., p. 1521, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.107. Assignment of Judgment on Lien

(a) A judgment perpetuating and foreclosing a tax lien may be transferred and assigned for the amount of the taxes covered in the judgment and may be reassigned by a subsequent holder.

(b) An assignment shall be filed and recorded and shall be released in the same manner as are liens before judgment.

(c) If notice of the assignment is given as provided by Subchapter E of Chapter 111 of this code,<sup>1</sup> the assignee is fully subrogated to and succeeds to all rights, liens, and remedies of the state.

[Acts 1981, 67th Leg., p. 1521, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 111.251 et seq.

[Sections 113.108 to 113.200 reserved  
for expansion]

### SUBCHAPTER C. UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

#### § 113.201. Place of Filing

(a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the county clerk of the county in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state; and

(2) in all other cases in the office of the county clerk of the county where the taxpayer resides at the time of filing of the notice of lien.

[Acts 1981, 67th Leg., p. 1521, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.202. Certification

Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

[Acts 1981, 67th Leg., p. 1522, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 113.203. Duties of Filing Officer

(a) If a notice of a federal tax lien, a refile of a notice of tax lien, or a notice of revocation of any certificate described in Subsection (b) of this section is presented to the filing officer and:

(1) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of Section 9.403(d), Uniform Commercial Code, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in Section 113.201 of this code, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director, and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge, or subordination of any tax lien is presented to the secretary of state for filing, he shall:

(1) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(2) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of a federal tax lien referred to in Subsection (a) or any of the certificates or notices referred to in Subsection (b) is presented for filing with any other filing officer specified in Section 113.201 of this code, he shall permanently attach the refiled notice of the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of a federal tax lien or certificate or notice affecting the lien, filed on or after January 1, 1972, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is \$1. Upon request the filing officer shall furnish a copy of any notice of a federal tax lien or notice or certificate affecting a federal tax lien for a fee of \$1 per page.

[Acts 1981, 67th Leg., p. 1522, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 113.204. Fees

The fee under this subchapter for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

- (1) for a notice of tax lien, \$2;
- (2) for a certificate of discharge or subordination, \$1; and
- (3) for all other notices, including a certificate of release or nonattachment, \$1.

[Acts 1981, 67th Leg., p. 1523, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 113.205. Purpose

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. The fees specified under the provisions of this subchapter for filing and indexing a notice of lien or certificate or notice affecting a tax lien shall be assessed in lieu of fees for such filing and indexing provided in Article 3930, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1981, 67th Leg., p. 1523, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 113.206. Short Title

This subchapter may be cited as the Uniform Federal Tax Lien Registration Act.

[Acts 1981, 67th Leg., p. 1523, ch. 389, § 1, eff. Jan. 1, 1982.]

SUBTITLE C. TAX CLEARANCE FUND

CHAPTER 131. TAX CLEARANCE FUND [REPEALED]

§§ 131.001 to 131.009. Repealed by Acts 1981, 67th Leg., p. 2779, § 9(i)(1), eff. Jan. 1, 1982

SUBTITLE D. COMPACTS AND UNIFORM LAWS

CHAPTER 141. MULTISTATE TAX COMPACT

Sec.

- 141.001. Adoption of Multistate Tax Compact.
- 141.002. Commission Member for This State.
- 141.003. Local Government Council.
- 141.004. Multistate Tax Compact Advisory Committee.
- 141.005. Interstate Audit Article Adopted.

§ 141.001. Adoption of Multistate Tax Compact

The Multistate Tax Compact is adopted and entered into with all jurisdictions legally adopting it to read as follows:

MULTISTATE TAX COMPACT  
ARTICLE I. PURPOSES

The purposes of this compact are to:

- 1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including

the equitable apportionment of tax bases and settlement of apportionment disputes.

- 2. Promote uniformity or compatibility in significant components of tax systems.
- 3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
- 4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS

As used in this compact:

- 1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
- 2. "Subdivision" means any governmental unit or special district of a state.
- 3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
- 4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
- 5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
- 6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
- 7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
- 8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

#### ARTICLE III. ELEMENTS OF INCOME TAX LAWS

##### Taxpayer Option, State and Local Taxes

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

##### Taxpayer Option, Short Form

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

##### Coverage

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

#### ARTICLE IV. DIVISION OF INCOME

1. As used in this article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which

the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no

base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f. o. b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

#### ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS

##### Tax Credit

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

#### Exemption Certificates, Vendors May Rely

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

#### ARTICLE VI. THE COMMISSION

##### Organization and Management

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the



executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

#### Committees

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

#### Powers

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### Finance

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by

duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### ARTICLE VII. UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### ARTICLE VIII. INTERSTATE AUDITS

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place

fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

## ARTICLE IX. ARBITRATION

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the

attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X. ENTRY INTO FORCE  
AND WITHDRAWAL

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

#### ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

#### ARTICLE XII. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[Acts 1981, 67th Leg., p. 1528, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 141.002. Commission Member for This State

(a) The governor shall appoint the comptroller to represent this state on the Multistate Tax Commission created by Article VI of the compact.

(b) The comptroller may designate one of his division chiefs as an alternate representative on the commission.

(c) The office of Multistate Tax Compact Commissioner for Texas is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the office is abolished and this chapter expires effective September 1, 1989.

[Acts 1981, 67th Leg., p. 1540, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 141.003. Local Government Council

After consultation with representatives of local governments, the governor shall appoint three persons who are representative of political subdivisions affected or likely to be affected by the compact. The comptroller and his alternate shall consult regularly with these appointees in accordance with Article VI 1(b) of the compact.

[Acts 1981, 67th Leg., p. 1540, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 141.004. Multistate Tax Compact Advisory Committee

(a) The Multistate Tax Compact Advisory Committee is created. It consists of:

(1) the comptroller and his alternate designated under Section 141.002 of this code;

(2) the attorney general or his designee;

(3) two members of the senate appointed by the president of the senate; and

(4) two members of the house appointed by the speaker of the house.

(b) The comptroller is chairman of the advisory committee.

(c) The committee shall meet at the call of the chairman or at the request of a majority of the members, but in any event the committee shall meet at least three times a year.

(d) The committee may consider any matters relating to recommendations of the Multistate Tax Commission and the activities of the members representing this state on the commission.

[Acts 1981, 67th Leg., p. 1540, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 141.005. Interstate Audit Article Adopted

The provisions of Article VIII of the compact, relating to interstate audits, are in force with respect to this state.

[Acts 1981, 67th Leg., p. 1540, ch. 389, § 1, eff. Jan. 1, 1982.]

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USE TAXES**

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## SUBCHAPTER A. GENERAL PROVISIONS

## § 151.001. Short Title

This chapter may be cited as the Limited Sales, Excise, and Use Tax Act.

[Acts 1981, 67th Leg., p. 1545, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 151.002. Applicability of Definitions, Etc.

The definitions and other provisions of this chapter relating to the collection, administration, and enforcement of the taxes imposed by this chapter, including the requirements for sales tax permits, apply to the parties to a sale of a taxable item that is exempted from the taxes imposed by this chapter but that is subject to the taxes imposed by a city under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 1545, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 151.003. "Business"

"Business" means an activity of or caused by a person for the purpose of a direct or indirect gain, benefit, or advantage.

[Acts 1981, 67th Leg., p. 1545, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 151.004. "In This State"

"In this state" means within the exterior limits of Texas and includes all territory within these limits ceded to or owned by the United States.

[Acts 1981, 67th Leg., p. 1545, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 151.005. "Sale" or "Purchase"

"Sale" or "purchase" means any of the following when done or performed for consideration:

- (1) a transfer of title or possession of tangible personal property or the segregation of tangible

personal property in contemplation of a transfer of its title or possession;

(2) the exchange, barter, lease, or rental of tangible personal property;

(3) the performance of a taxable service;

(4) the production, fabrication, processing, printing, or imprinting of tangible personal property for consumers who directly or indirectly furnish the materials used in the production, fabrication, processing, printing, or imprinting;

(5) the furnishing and distribution of tangible personal property by a social club or fraternal organization to anyone;

(6) the furnishing, preparation, or service of food, meals, or drinks;

(7) a transfer of the possession of tangible personal property if the title to the property is retained by the seller as security for the payment of the price; or

(8) a transfer of the title or possession of tangible personal property that has been produced, fabricated, or printed to the special order of the customer.

[Acts 1981, 67th Leg., p. 1545, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.006. "Sale for Resale"

"Sale for resale" means a sale of:

(1) tangible personal property to a purchaser who acquires the property for the purpose of reselling it in the United States of America or a possession or territory of the United States of America in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America as an integral part of a taxable service; or

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service.

[Acts 1981, 67th Leg., p. 1546, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.007. "Sales Price" or "Receipts"

(a) "Sales price" or "receipts" means the total amount for which a taxable item is sold, leased, or rented, valued in money, without a deduction for the cost of:

(1) the taxable item sold, leased, or rented;

(2) the materials used, labor or service employed, interest, losses, or other expenses;

(3) the transportation of tangible personal property before the sale; or

(4) transportation incident to the performance of a taxable service.

(b) The total amount for which a taxable item is sold, leased, or rented includes a service that is a part of the sale and the amount of credit given to the purchaser by the seller.

(c) "Sales price" or "receipts" does not include any of the following if separately identified to the customer by such means as an invoice, billing, sales slip or ticket, or contract:

(1) a cash discount allowed on the sale;

(2) the amount charged for tangible personal property returned by a customer if the total amount charged is refunded by cash or credit;

(3) a refund of the charges for the performance of a taxable service;

(4) the amount of tax imposed by the United States on or with respect to retail or wholesale sales of tires or fishing equipment, whether imposed on the retailer, wholesaler, or consumer under Subtitle D or E, Title 26, United States Code;<sup>1</sup>

(5) finance, carrying and service charges, or interest from credit extended on sales of taxable items under a conditional sales contract or other contract providing for the deferred payment of the purchase price;

(6) the value of tangible personal property taken by a seller in trade as all or part of the consideration for a sale of a taxable item;

(7) a charge for transportation of tangible personal property after the sale, including a separately stated charge for transportation of tangible personal property segregated in contemplation of the transfer of possession or title with the terms of the sale at a price fixed F.O.B. at the seller's place of business.

(8) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the tangible personal property sold;

(9) the face value of United States coin or currency in a sale of that coin or currency in which the total consideration given by the purchaser exceeds the face value of the coin or currency; or

(10) a voluntary gratuity or a reasonable mandatory charge for the service of a meal or food products, including soft drinks and candy, for immediate human consumption when the service charge is separated from the sales price of the meal or food product and identified as a gratuity or tip and when the total amount of the service charge is disbursed by the employer to employees who customarily and regularly provide the service.

[Acts 1981, 67th Leg., p. 1546, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 4001 et seq. or § 5001 et seq.

**§ 151.008. "Seller" or "Retailer"**

(a) "Seller" or "retailer" means a person engaged in the business of making sales of taxable items of a kind the receipts from the sale of which are included in the measure of the sales or use tax imposed by this chapter.

(b) "Seller" and "retailer" include:

(1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;

(2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy; and

(3) a person regarded by the comptroller as a seller or retailer under Section 151.024 of this code.

[Acts 1981, 67th Leg., p. 1547, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.009. "Tangible Personal Property"**

"Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner.

[Acts 1981, 67th Leg., p. 1547, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.010. "Taxable Item"**

"Taxable item" means tangible personal property.

[Acts 1981, 67th Leg., p. 1547, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.011. "Use" and "Storage"**

(a) Except as provided by Subsections (b) and (e) of this section, "use" means the exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property and, except as provided by Section 151.056(b) of this code, includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

(b) "Use" does not include the sale of tangible personal property in the regular course of business or the transfer of tangible personal property as an integral part of a taxable service performed in the regular course of business.

(c) Except as provided by Subsections (d) and (e) of this section, "storage" means the keeping or retaining for any purpose in this state of tangible personal property sold by a retailer.

(d) "Storage" does not include the keeping or retaining of tangible personal property for sale in the regular course of business.

(e) Neither "use" nor "storage" includes the exercise of a right or power over, or the keeping or

retaining of, tangible personal property for the purpose of:

(1) transporting the property outside the state for use solely outside the state; or

(2) processing, fabricating, or manufacturing the property into other property or attaching the property to or incorporating the property into other property to be transported outside the state for use solely outside the state.

[Acts 1981, 67th Leg., p. 1547, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.012 to 151.020 reserved for expansion]

**SUBCHAPTER B. ADMINISTRATION AND RECORDS**

**§ 151.021. Employees**

The comptroller may employ accountants, auditors, investigators, assistants, and clerks for the administration of this chapter and may delegate to employees the authority to conduct hearings, prescribe rules, and perform other duties required by this chapter.

[Acts 1981, 67th Leg., p. 1548, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.022. Retroactive Effect of Rules**

The comptroller may prescribe the extent to which a rule or ruling shall be applied without retroactive effect.

[Acts 1981, 67th Leg., p. 1548, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.023. Investigations and Audits**

The comptroller, or another person authorized by the comptroller in writing, may examine the books, records, papers, and equipment of a person who sells taxable items or of a person liable for the use tax and may 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.

[Acts 1981, 67th Leg., p. 1548, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.024. Persons Who May be Regarded as Retailers**

If the comptroller determines that it is necessary for the efficient administration of this chapter to regard a salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains the tangible personal property that he sells, whether or not the sale is made in his own behalf or for the dealer, distributor, supervisor, or employer, the comptroller may so regard the salesman, representative, peddler, or canvasser, and may regard the dealer, distributor, supervisor, or



employer as a retailer or seller for the purpose of this chapter.

[Acts 1981, 67th Leg., p. 1548, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.025. Records Required to be Kept

(a) All sellers and all other persons storing, using, or consuming in this state a taxable item purchased from a retailer shall keep the records, receipts, invoices, and other pertinent papers in the form that the comptroller reasonably requires.

(b) A record required by Subsection (a) of this section shall be kept for not less than four years from the day that it is made unless the comptroller authorizes its destruction at an earlier date.

[Acts 1981, 67th Leg., p. 1548, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.026. Out-of-State Records

A taxpayer is entitled to keep or store the taxpayer's records outside this state. If the comptroller requests to examine a record kept or stored outside this state, the taxpayer shall bring the record into this state for the examination or permit the comptroller to examine the record at the out-of-state location.

[Acts 1981, 67th Leg., p. 1549, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.027. Confidentiality of Tax Information

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

(b) Information secured, derived, or obtained during the course of an examination of a taxpayer's books, records, papers, officers, or employees, including the business affairs, operations, profits, losses, and expenditures of the taxpayer, is confidential and not open to public inspection except as provided by Subsection (c) of this section.

(c) This section does not prohibit:

(1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, or by an official of the United States if a reciprocal agreement exists;

(2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;

(3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;

(4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this

chapter against the same taxpayer who furnished the information; or

(5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected.

[Acts 1981, 67th Leg., p. 1549, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.028. Federal Excise Tax Information

The comptroller shall provide to each seller who sells taxable items subject to a tax under Subtitle D or E, Title 26, United States Code:<sup>1</sup>

(1) information concerning the amount of federal excise tax collected from the manufacturer, wholesaler, retailer, or consumer; and

(2) tables for the computation of the sales price of taxable items.

[Acts 1981, 67th Leg., p. 1549, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 4001 et seq. or § 5001 et seq.

#### § 151.029. Remedies Not Exclusive

An action taken by the comptroller or the attorney general under this chapter is not an election to pursue one remedy to the exclusion of any other remedy authorized by this chapter.

[Acts 1981, 67th Leg., p. 1549, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.030 to 151.050 reserved for expansion]

### SUBCHAPTER C. IMPOSITION AND COLLECTION OF SALES TAX

#### § 151.051. Sales Tax Imposed

(a) A tax is imposed on each sale of a taxable item in this state.

(b) The sales tax rate is four percent of the sales price of the taxable item sold.

[Acts 1981, 67th Leg., p. 1550, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.052. Collection by Retailer

(a) A seller who makes a sale subject to the sales tax imposed by this chapter shall add the amount of the tax to the sales price, and when the amount of the tax is added:

(1) it becomes a part of the sales price;

(2) it is a debt of the purchaser to the seller until paid; and

(3) if unpaid, it is recoverable at law in the same manner as the original sales price.

(b) The owner or former owner of tangible personal property, a factor of the owner or former owner, or an agent of the owner, former owner, or factor shall collect the sales tax and add the amount

of the tax to the sales price of the tangible personal property if the person delivers the property to a consumer in this state or to another person for redelivery to a consumer in this state under a sale of the property that is not a sale for resale and that is made by a seller not engaged in business in this state.

(c) When several taxable items are sold together and at the same time, the sales tax is determined on the sum of the sales prices of the items sold exclusive of any item the sale of which is exempted by this chapter.

[Acts 1981, 67th Leg., p. 1550, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.053. Sales Tax Brackets

(a) If the sales price involves a fraction of a dollar, the sales tax to be added to the sales price shall be determined under the following schedule:

AMOUNT OF SALE	TAX
\$ .01 to \$ .12	No tax
.13 to .37	\$ .01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04

(b) Successive brackets for the schedule in this section shall be computed by multiplying the percentage rate of the sales tax times the amount of the sale. A fraction of one cent that is less than one-half of one cent is not collected and a fraction of one cent that is equal to one-half of one cent or more is collected as one cent of tax.

[Acts 1981, 67th Leg., p. 1550, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.054. Gross Receipts Presumed Subject to Tax

(a) Except as provided by Subsections (b) and (c) of this section, all gross receipts of a seller are presumed to have been subject to the sales tax until the contrary is established.

(b) The burden of showing that a sale of tangible personal property is a sale for resale is on the seller unless the seller receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate stating that the tangible personal property is acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

(c) A sale of liquor, wine, beer, or malt liquor by the holder of a manufacturer's license, wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, local distributor's permit, or a general, local, or branch distributor's license issued under the Alcoholic Beverage Code to the holder of a retail license or permit issued under the Alcoholic Beverage Code is presumed to be a

sale for resale. In a sale to which this section applies, the seller is not required to receive a resale certificate from the purchaser.

[Acts 1981, 67th Leg., p. 1550, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.055. Sales of Items Acquired for Lease or Rental

(a) If a person purchases tangible personal property by means of a sale for resale for the purpose of renting or leasing the property for use but subsequently sells the property in an occasional sale before the person has collected and paid to the state an amount of sales tax on rental or lease charges equal to the amount of sales tax that would have been due if the person had not acquired the property at a sale for resale, the person at the time of the occasional sale shall include in his receipts from taxable sales the amount by which the purchase price of the item at the occasional sale exceeds the amount received from renting or leasing the property.

(b) If tangible personal property is rented or leased under an agreement that provides that all or a portion of the rental or lease payments may be credited against the purchase price of the item and the property is sold to the lessee, the lessor shall collect the sales tax only on that portion of the sales price that exceeds the amount of lease or rental charges on which the tax has previously been collected and paid.

[Acts 1981, 67th Leg., p. 1551, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.056. Property Consumed in Repairs and Contracts

(a) A contractor or repairman is the consumer of tangible personal property furnished by him and incorporated into the property of his customer if the contract between the contractor or repairman and his customer contains a lump-sum price covering both the performance of the service and the furnishing of the necessary incidental material.

(b) A contractor or repairman is the seller of tangible personal property furnished by him and incorporated into the property of his customer, from whom he shall collect the tax, if the contract between the contractor or repairman and his customer contains separate amounts for the performance of the service and for the furnishing of the necessary incidental material. The tax rate is applied to the price of the materials as agreed in the contract or the price of the materials to the contractor or repairman, whichever is the greater.

(c) If a contractor or repairman has paid the sales tax to his supplier when the tangible personal property is purchased, the contractor or repairman may credit the amount of the tax paid to the supplier against the tax imposed as provided in Subsection (b) of this section with respect to a subsequent sale of the property.

(d) In this section, "contractor" or "repairman" means a person who performs a repair service on tangible personal property or makes an improvement on real estate and who, as a necessary or incidental part of the service, incorporates tangible personal property into the property repaired or improved.

(e) This section does not apply to the use or consumption of tangible personal property as a necessary or incidental part of a taxable service.

[Acts 1981, 67th Leg., p. 1551, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.057 to 151.100 reserved for expansion]

**SUBCHAPTER D. IMPOSITION AND COLLECTION OF USE TAX**

**§ 151.101. Use Tax Imposed**

(a) A tax is imposed on the storage, use, or other consumption in this state of a taxable item purchased from a retailer for storage, use, or other consumption in this state.

(b) The tax is at the same percentage rate as is provided by Section 151.051 of this code on the sales price of the taxable item.

[Acts 1981, 67th Leg., p. 1552, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.102. User Liable for Tax**

(a) The person storing, using, or consuming a taxable item in this state is liable for the tax imposed by Section 151.101 of this code, and except as provided by Subsection (b) of this section, the liability continues until the tax is paid to the state.

(b) A person storing, using, or consuming a taxable item in this state is not further liable for the tax imposed by Section 151.101 of this code if the person pays the tax to a retailer engaged in business in this state or other person authorized by the comptroller to collect the tax and receives from the retailer or other person a purchaser's receipt given as provided in Section 151.103 of this code.

[Acts 1981, 67th Leg., p. 1552, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.103. Collection by Retailer; Purchaser's Receipt**

(a) A retailer engaged in business in this state who makes a sale of a taxable item for storage, use, or consumption in this state shall collect the use tax that is due from the purchaser and give the purchaser a receipt for the tax payment.

(b) The purchaser's receipt must be issued in the form and manner prescribed by the comptroller.

[Acts 1981, 67th Leg., p. 1552, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.104. Sale for Storage, Use, or Consumption Presumed**

(a) A sale of tangible personal property by a person for delivery in this state is presumed to be a sale for storage, use, or consumption in this state until the contrary is established.

(b) The burden of showing that a sale of tangible personal property for delivery in this state is not for storage, use, or consumption in this state is on the person making the sale unless the person receives in good faith from a purchaser, who is in the business of selling, leasing, or renting taxable items, a resale certificate stating that the property is acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

[Acts 1981, 67th Leg., p. 1552, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.105. Importation for Storage, Use, or Consumption Presumed**

(a) Tangible personal property that is shipped or brought into this state by a purchaser is presumed, in the absence of evidence to the contrary, to have been purchased from a retailer for storage, use, or consumption in this state.

(b) A taxable service used in this state is presumed, in the absence of evidence to the contrary, to have been purchased from a retailer for use in this state.

[Acts 1981, 67th Leg., p. 1552, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.106. Registration of Retailers**

(a) A retailer who sells a taxable item for storage, use, or consumption in this state shall register with the comptroller.

(b) The registration must include:

(1) the name and address of each agent of the retailer operating in the state;

(2) the location of all distribution or sales houses or offices or other places of business in the state; and

(3) other information that the comptroller requires.

(c) A retailer required to register under this section must comply with Subchapter G of this chapter.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1553, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 151.251 et seq.

**§ 151.107. Retailer Engaged in Business in This State**

For the purpose of this subchapter and in relation to the use tax, a retailer is engaged in business in this state if the retailer:

(1) maintains, occupies, or uses in this state permanently, temporarily, directly, or indirectly or through a subsidiary or agent by whatever name, an office, place of distribution, sales or sample room or place, warehouse, storage place, or any other place of business; or

(2) has a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling or delivering or the taking of orders for a taxable item.

[Acts 1981, 67th Leg., p. 1553, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.108 to 151.150 reserved for expansion]

#### SUBCHAPTER E. RESALE AND EXEMPTION CERTIFICATES

##### § 151.151. Resale Certificate

A purchaser may give a resale certificate for the acquisition of tangible personal property if the purchaser intends to sell, lease, or rent it in the regular course of business or transfer it as an integral part of a taxable service performed in the regular course of business or if, at the time of the sale, the purchaser is unable to ascertain whether it will be sold, leased, rented, or transferred in the regular course of business or used for some other purpose.

[Acts 1981, 67th Leg., p. 1553, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 151.152. Resale Certificate: Form

(a) A resale certificate must be substantially in the form prescribed by the comptroller.

(b) A resale certificate must:

(1) be signed by the purchaser and contain the purchaser's name and address;

(2) state the purchaser's tax permit number or that the purchaser's application for a tax permit is pending before the comptroller; and

(3) contain a description of the tangible personal property sold, leased, or rented by the purchaser in the regular course of business or transferred as an integral part of a taxable service performed in the regular course of business.

[Acts 1981, 67th Leg., p. 1553, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 151.153. Resale Certificate: Commingled Fungible Goods

If a purchaser gives a resale certificate with respect to the purchase of fungible goods and then commingles the goods with other similar fungible goods for which a resale certificate was not given, sales from the mass of commingled fungible goods are deemed to be sales of goods covered by the

resale certificate until the quantity of goods covered by the certificate equals the quantity of goods sold.

[Acts 1981, 67th Leg., p. 1554, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 151.154. Resale Certificate: Liability of Purchaser

(a) If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business or for transfer as an integral part of a taxable service in the regular course of business, the purchaser shall be liable for payment of the sales tax on the fair market rental value for any period during which the tangible personal property is used other than for retention, demonstration, or display. The fair market rental value of the tangible personal property is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for his use. If the item has no fair market rental value, the original purchase price shall be the measure of the tax. At any time, the person making the divergent use may cease paying tax on the fair market rental value and pay sales tax on the original purchase price without credit for taxes previously paid on the fair market rental value.

(b) A purchaser of tangible personal property who gives a resale certificate is not liable for the tax imposed by this chapter if he donates the property to an organization exempted under Section 151.309 or 151.310(a)(1) or (2) of this code; except that any use by the purchaser of the property other than retention, demonstration, or display shall be subject to taxes imposed by Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1554, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 151.155. Exemption Certificate

(a) If a purchaser certifies in writing to a seller that a taxable item sold, leased, or rented to the purchaser will be used in a manner or for a purpose that qualifies the sale of the item for an exemption from the taxes imposed by this chapter, and if the purchaser then uses the item in some other manner or for some other purpose, the purchaser is liable for the payment of the sales tax on the fair market rental value for any period during which the item is used in the divergent manner or for the divergent purpose. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the property for his use. If the item has no fair market rental value, the original purchase price shall be the measure of tax. At any time, the person making the divergent use may cease paying tax on the fair market rental value and pay sales tax on the original purchase price without credit for taxes previously paid on the fair market rental value.

(b) A purchaser of tangible personal property who gives an exemption certificate is not liable for the tax imposed by this chapter if he donates the property to an organization exempted under Section 151.309 or 151.310(a)(1) or (2) of this code; except that any use by the purchaser of the property other than retention, demonstration, or display shall be subject to taxes imposed by Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1554, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.156 to 151.200 reserved for expansion]

**SUBCHAPTER F. SALES TAX PERMITS**

**§ 151.201. Sales Tax Permits**

(a) The comptroller shall issue without charge to an applicant who qualifies under Section 151.202 of this code and under Subchapter G of this chapter<sup>1</sup> a separate permit for each place of business in this state.

(b) The holder of a permit shall display it conspicuously in the place of business to which it applies.

(c) A permit is valid only for the person and the place of business to which it applies and is nonassignable.

[Acts 1981, 67th Leg., p. 1555, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 151.251 et seq.

**§ 151.202. Application for Permit**

(a) A person desiring to be a seller in this state shall file with the comptroller an application for a permit for each place of business.

(b) An application must:

- (1) be on a form prescribed by the comptroller;
- (2) state the name under which the applicant transacts or intends to transact business;
- (3) give the address of the place of business to which the permit is to apply;
- (4) contain any other information required by the comptroller; and
- (5) be signed by the owner if the owner is an individual, a member or partner if the owner is an association or partnership, or an executive officer or other person authorized by the corporation to sign the application if the owner is a corporation.

[Acts 1981, 67th Leg., p. 1555, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.203. Suspension and Revocation of Permit**

(a) If a person fails to comply with a provision of this chapter or with a rule of the comptroller adopted under this chapter and relating to the sales tax, the comptroller, after a hearing, may revoke or suspend one or more permits issued to the person.

(b) A person whose permit the comptroller proposes to revoke or suspend is entitled to 20 days'

written notice of the time and place of the hearing on the revocation or suspension. At the hearing the person must show cause why each permit should not be suspended or revoked.

(c) The comptroller shall give written notice of the revocation or suspension of a permit to the holder of the permit.

(d) Notices under this section may be served on the permit holder personally or may be mailed to the permittee's address as shown in the records of the comptroller.

[Acts 1981, 67th Leg., p. 1555, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.204. Reissued or New Permit After Revocation or Suspension**

(a) A new permit may not be issued to a former holder of a revoked permit unless the comptroller is satisfied that the person will comply with the provisions of this chapter and the rules of the comptroller relating to the sales tax.

(b) The comptroller may prescribe the terms under which a suspended permit may be reissued.

[Acts 1981, 67th Leg., p. 1555, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.205. Appeals**

A taxpayer may appeal the revocation or suspension of a tax permit in the same manner that appeals are made from a final deficiency determination.

[Acts 1981, 67th Leg., p. 1556, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.206 to 151.250 reserved for expansion]

**SUBCHAPTER G. SELLER'S AND RETAILER'S SECURITY**

**§ 151.251. Security Required**

(a) An applicant for a sales tax permit or for registration as a retailer under Section 151.106 of this code must file with the comptroller adequate security for the payment of the taxes imposed by this chapter.

(b) If the holder of a sales tax permit or a retailer registered under Section 151.106 of this code who is exempted under Section 151.254 of this code from filing security under this subchapter is determined by the comptroller to be delinquent in the payment of the taxes imposed by this chapter, the comptroller shall require the holder or retailer to file with the comptroller adequate security for the payment of the taxes imposed by this chapter.

(c) For the purposes of Subsection (b) of this section, a holder of a permit or a retailer is delinquent in the payment of the taxes imposed by this chapter if the holder or retailer fails to file all reports due or to pay any determination before the

day the determination could be paid without additional penalty.

(d) If the comptroller determines that it is necessary to ensure compliance with this chapter, the comptroller may require security from a person as a condition to retaining a permit under this chapter.

[Acts 1981, 67th Leg., p. 1556, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.252. Temporary Permit

(a) The comptroller may issue a temporary sales tax permit or retailer's registration to an applicant for a period determined by the comptroller in order to arrange for and provide the security required by this subchapter.

(b) A temporary permit or registration expires without further notice on the expiration date shown on the temporary permit or registration.

[Acts 1981, 67th Leg., p. 1556, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.253. Security: Requirements

(a) The security required by this subchapter may be a cash bond, a bond from a surety company chartered or authorized to do business in this state, a certificate of deposit, a certificate of savings or U.S. Treasury bond, an assignment of negotiable stocks or bonds that has been approved by the comptroller, or any other security deemed by the comptroller to be sufficient for the payment of taxes imposed by this chapter.

(b) The comptroller shall 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 the Local Sales and Use Tax Act and the necessity to protect the state against the failure to pay these taxes, except that the maximum amount of security that may be required is the lesser of \$50,000 or three times the amount of the person's average monthly tax liability.

(c) A bond qualifying under this subchapter must be a continuing instrument and a new and separate obligation for the penal sum named in the bond for each calendar year or portion of a calendar year while the bond is in effect. The bond must remain in effect until the surety or sureties are released and discharged.

[Acts 1981, 67th Leg., p. 1556, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1365, ch. 281, § 7, eff. Oct. 1, 1983.]

#### § 151.254. Exemption From Filing Security

(a) A person who has filed security under this subchapter is exempted from the security requirements of this subchapter and is entitled, on request, to have the comptroller return, refund, or release the security if in the judgment of the comptroller the person has for two consecutive years continu-

ously complied with the conditions of the security filed under this subchapter.

(b) A person who received a sales tax permit or was registered as a retailer before January 1, 1974, and has not been determined to be delinquent as provided by Section 151.251(b) of this code or been required to file security under this subchapter is exempted from filing security.

[Acts 1981, 67th Leg., p. 1557, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.255. Notice

(a) If the comptroller determines that the holder of a permit or a registered retailer is required to file security under Section 151.251(b) of this code, the comptroller shall notify the person in writing that security is required to be filed and state the amount of security set by the comptroller.

(b) Notice under this subsection shall be mailed to the permit holder or registered retailer at the address shown in the comptroller's records.

[Acts 1981, 67th Leg., p. 1557, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.256. Failure to Provide Security: Loss of Permit

If a person fails to provide security under this subchapter as provided by Section 151.251(b) of this code, the comptroller shall revoke or suspend the permit or retailer's registration of the person as provided by Section 151.203 of this code.

[Acts 1981, 67th Leg., p. 1557, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.257. Forfeiture of Security: Determination

(a) If a person who has filed a security under this subchapter fails to pay the taxes imposed by this chapter or by a city under the Local Sales and Use Tax Act<sup>1</sup> or fails to file a tax return required by this chapter or under the Local Sales and Use Tax Act, the comptroller shall issue a deficiency or jeopardy determination containing a demand for the amount of taxes, penalties, and interest due. The determination shall state that if payment is not made on or before the last day that the deficiency may be paid without incurring further penalty, the security or a part of the security may be forfeited.

(b) If the security filed by the person is a surety bond, the comptroller shall send a copy of the determination to each surety on the bond and shall demand payment from both the person filing the bond and each surety.

[Acts 1981, 67th Leg., p. 1557, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 1066c.

#### § 151.258. Sale of Security

(a) If necessary to recover an amount of tax, penalty, or interest, the comptroller may sell security deposited under this subchapter. A sale shall be

public and notice of the sale may be given personally or by mail to the person who deposited the security.

(b) If the notice is given by mail, the comptroller may send it to the last known address appearing in the records of the comptroller.

(c) Subject to the requirement of additional security required by Section 151.260 of this code, the comptroller shall return to the depositor any security remaining after the sale and after recovering the amount of tax, penalty, and interest due from the depositor.

[Acts 1981, 67th Leg., p. 1557, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.259. Security Insufficient to Pay Tax**

(a) If payment of the tax due is not made and the forfeiture of the security does not satisfy the delinquency, the comptroller shall suspend or revoke the permit or registration of the taxpayer as provided by Section 151.203 of this code.

(b) If the permit or registration is suspended, the comptroller shall certify to the attorney general the amount of taxes, penalties, and interest delinquent under this chapter.

(c) A permit or registration revoked or suspended under this section may not be reinstated until all taxes, penalties, and interest have been paid and another security is filed with the comptroller. The comptroller shall set the amount of the security subject only to the maximum amounts provided by Section 151.253(b) of this code.

[Acts 1981, 67th Leg., p. 1558, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.260. Security Sufficient to Pay Tax**

(a) If the security is forfeited in whole or in part and no delinquency remains, the comptroller shall demand from the person new or additional security to be filed before the expiration of 10 days after the date the notice of the demand is given.

(b) The amount of the new or additional security shall be set by the comptroller subject only to the maximum amounts as provided by Section 151.253(b) of this code.

(c) If the person fails to file the amount of the new or additional security before the expiration of the 10-day period, the comptroller shall suspend or revoke the permit or registration of the taxpayer as provided by Section 151.203 of this code and certify the name and address of the person to the attorney general.

[Acts 1981, 67th Leg., p. 1558, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.261. Notice to Cities**

If a permit or registration is revoked or suspended under this subchapter, the comptroller shall noti-

fy the applicable city of any delinquency under the Local Sales and Use Tax Act.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1558, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Civil Statutes, art. 1066c.

**§ 151.262. Suits by Attorney General**

(a) The attorney general may file suit for an injunction prohibiting a person from engaging in the business of selling taxable items subject to the taxes imposed by this chapter if the person engages in that business and does not have a valid permit or retailer's registration issued to him by the comptroller for each place of business.

(b) The attorney general shall bring suit against a person whose name is certified to him under Section 151.259(b) of this code, the person's sureties, or both, to collect the amount of delinquent tax due.

(c) The attorney general may bring suit on a surety bond against the sureties without making the person who is the principal obligor a party to the suit.

(d) Venue for a suit under this section is in Travis County.

[Acts 1981, 67th Leg., p. 1558, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.263 to 151.300 reserved for expansion]

**SUBCHAPTER H. EXEMPTIONS**

**§ 151.301. "Exempted From the Taxes Imposed by This Chapter"**

If a taxable item is exempted from the taxes imposed by this chapter, the sale, storage, use or other consumption of the item is not subject to the sales tax imposed by Section 151.051 of this code or the use tax imposed by Section 151.101 of this code if the item meets the qualifications for exemption as provided in this subchapter; and when an item is exempted from the taxes imposed by this chapter the receipts from its sale are excluded from the computation of the taxes.

[Acts 1981, 67th Leg., p. 1559, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.302. Sales for Resale**

The sale for resale of a taxable item is exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1559, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.303. Previously Taxed Items: Use Tax Exemption or Credit**

(a) The storage, use, or other consumption of a taxable item the sale of which is subject to the sales tax is exempted from the use tax imposed by Subchapter D of this chapter.<sup>1</sup>

(b) The storage, use, or other consumption of a taxable item on which the person storing, using, or consuming the item has paid a use tax is exempted from the use tax imposed by Subchapter D of this chapter.

(c) A taxpayer is entitled to a credit against the use tax imposed by Subchapter D of this chapter on a taxable item in an amount equal to the amount of any similar tax paid by the taxpayer in another state on the sale, purchase, or use of the taxable item if the state in which the tax was paid provides a similar credit for a taxpayer of this state.

[Acts 1981, 67th Leg., p. 1559, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 151.101 et seq.

#### § 151.304. Occasional Sales

(a) An occasional sale of a taxable item and the storage, use, or consumption of a taxable item the sale or transfer of which to a consumer is made by an occasional sale are exempted from the taxes imposed by this chapter.

(b) In this section, "occasional sale" means:

(1) one or two sales of taxable items at retail during a 12-month period by a person who does not habitually engage, or hold himself out as engaging, in the business of selling taxable items at retail;

(2) the sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business; or

(3) a transfer of all or substantially all the property used by a person in the course of an activity if after the transfer the real or ultimate ownership of the property is substantially similar to that which existed before the transfer.

(c) Within the meaning of Subsection (b)(2) of this section, a separate division, branch, or identifiable segment of a business exists if before its sale the income and expenses attributable to the separate division, branch, or segment could be separately ascertained from the books of account or record.

(d) Within the meaning of Subsection (b)(3) of this section, the stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity have the real or ultimate ownership of the property of the corporation or other entity.

[Acts 1981, 67th Leg., p. 1559, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.305. Coin-Operated Machine Sales

(a) Tangible personal property when sold through a coin-operated vending machine for a total consideration of 16 cents or less is exempted from the taxes imposed by this chapter.

(b) Telephone service paid for by the insertion of coins into a coin-operated telephone is exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1560, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.306. Transfers of Common Interests in Property

If an interest in tangible personal property 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 property with the seller, and if the taxes imposed by this chapter have previously been paid on the tangible personal property, the tangible personal property is exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1560, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.307. Exemptions Required by Prevailing Law

Tangible personal property or service that this state is prohibited from taxing by the law of the United States, the United States Constitution, or the Constitution of Texas is exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1560, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.308. Items Taxed by Other Law

The following are exempted from the taxes imposed by this chapter:

(1) oil as taxed by Chapter 202 of this code;

(2) sulphur as taxed by Chapter 203 of this code;

(3) cigarettes as defined and taxed by Chapter 154 of this code;

(4) cigars and tobacco products as defined and taxed under Chapter 155 of this code;

(5) motor fuels and special fuels as defined, taxed, or exempted by Chapter 153 of this code;

(6) cement as taxed by Chapter 181 of this code;

(7) motor vehicles, trailers, and semitrailers as defined, taxed, or exempted by Chapter 152 of this code;

(8) mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items if the receipts are taxable by Chapter 202, Alcoholic Beverage Code; and

(9) alcoholic beverages when sold to the holder of a private club registration permit or to the agent or employee of the holder of a private club registration permit if the holder or agent or employee is acting as the agent of the members of the club and if the beverages are to be served on the premises of the club.

[Acts 1981, 67th Leg., p. 1560, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.309. Governmental Entities

A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following governmental entities is exempted from the taxes imposed by this chapter:



- (1) the United States;
- (2) an unincorporated instrumentality of the United States;
- (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States;
- (4) this state; or
- (5) a county, city, special district, or other political subdivision of this state.

[Acts 1981, 67th Leg., p. 1560, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.310. Religious, Educational, and Public Service Organizations**

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, 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 items purchased are related to the purpose of the organization;
- (2) an organization qualifying for an exemption from federal income taxes under Section 501(c)(3), (4), (8), (10), or (19), Internal Revenue Code,<sup>1</sup> of the item sold, leased, rented, stored, used, or consumed relates to the purpose of the exempted organization and the item 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;
- (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 taxable item is used exclusively by the company, department, or association; or
- (5) a chamber of commerce or a convention and tourist promotional agency representing at least one Texas city or county if the chamber of commerce or the agency is not organized for profit and no part of its net earnings inures to a private shareholder or other individual.

(b) The sale of, or contracting for the sale of, concessions at an event conducted by an organization exempted under Subsection (a)(3) of this section does not prevent the application of the exemption to that organization.

(c) An organization that qualifies for an exemption under Subsection (a)(1) of this section may hold one tax-free sale or auction during a calendar year and the tax-free sale or auction may continue for one day only. The sale of a taxable item by a

qualified organization at a tax-free sale or auction is exempted from the sales tax imposed by Subchapter C of this chapter.<sup>2</sup> The storage, use, or consumption of a taxable item acquired from a qualified organization at a tax-free sale or auction is exempted from the use tax imposed by Subchapter D of this chapter<sup>3</sup> until the item is resold or subsequently transferred.

(d) If two or more organizations jointly hold a tax-free sale or auction, neither organization may hold another tax-free sale or auction during the calendar year. The employment of and payment of a reasonable fee to an auctioneer to conduct a tax-free auction does not disqualify an otherwise qualified organization from receiving the exemption provided by Subsection (c) of this section.

[Acts 1981, 67th Leg., p. 1561, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2771, ch. 752, § 7(a), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 2747, ch. 470, § 2, eff. Sept. 1, 1983.]

<sup>1</sup> 26 U.S.C.A. § 501(c)(3), (4), (8), (10), or (19).

<sup>2</sup> Section 151.051 et seq.

<sup>3</sup> Section 151.101 et seq.

**§ 151.311. Property Used for Improvement of Realty of an Exempt Organization**

Tangible personal property purchased by a contractor for use in the performance of a contract for the improvement of realty for an organization exempted from the taxes imposed by this chapter is exempted from the taxes imposed by this chapter to the extent of the value of the tangible personal property used or consumed or both in the performance of the contract.

[Acts 1981, 67th Leg., p. 1561, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.312. Religious Periodicals and Writings**

Periodicals that are published or distributed by a religious faith and that consist wholly of writings promulgating the teaching of the faith and books that consist wholly of writings sacred to a religious faith are exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1561, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.313. Health Care Supplies**

The following items are exempted from the taxes imposed by this chapter:

- (1) a drug or medicine, other than insulin, if prescribed or dispensed for a human or animal by a licensed practitioner of the healing arts;
- (2) insulin;
- (3) a hypodermic syringe or needle;
- (4) a brace; hearing aid; orthopedic, dental, or prosthetic device; ileostomy, colostomy, or ileal bladder appliance; or supplies or replacement parts for the listed items;
- (5) a therapeutic appliance, device, and any related supplies specifically designed for those prod-

ucts, if dispensed or prescribed by a licensed practitioner of the healing arts; when those items are purchased and used by an individual for whom the items listed in this subdivision were dispensed or prescribed;

(6) corrective lens and necessary and related supplies, if dispensed or prescribed by an ophthalmologist or optometrist;

(7) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone and all materials, paper, and printing ribbons used in that equipment;

(8) a braille wristwatch, braille writer, and braille paper and braille electronic equipment that connects to computer equipment; and

(9) each of the following items if purchased for use by the blind to enable them to function more independently: a slate and stylus, print enlarger, magnifier, white cane, talking clock, large print terminal, talking terminal, or harness for guide dog.

[Acts 1981, 67th Leg., p. 1562, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2758, ch. 752, § 5(a), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 2746, ch. 470, § 1, eff. Sept. 1, 1983.]

#### § 151.3131. Texas Hospital Equipment Financing Council

There are exempted from the taxes imposed by this chapter the receipts from the sale, lease, or rental of any taxable items to or the storage, use, or other consumption of taxable items by the Texas Hospital Equipment Financing Council if the items are for the exclusive use and benefit of the council. The exemption provided by this section does not apply to an item that is to be leased, sold, or lent by the council.

[Acts 1983, 68th Leg., p. 3753, ch. 577, § 18, eff. Aug. 29, 1983.]

#### § 151.314. Food and Food Products

(a) Food products for human consumption are exempted from the taxes imposed by this chapter.

(b) "Food products" shall include, except as otherwise provided herein, but shall not be limited to cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments, and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa products; or any combination of the above.

(c) "Food products" shall not include:

(1) medicines, tonics, vitamins, and medicinal preparations in any form;

(2) carbonated and noncarbonated packaged soft drinks and diluted juices where sold in liquid or frozen form and ice and candy;

(3) foods and drinks (which include meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juices, ice cream in cones or small cups) served, prepared, or sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels, or like places of business or sold ready for immediate consumption from pushcarts, motor vehicles, or any other form of vehicle.

(d) Food and drink purchased by a common carrier for the purpose of serving passengers traveling en route aboard the carrier are exempted from the taxes imposed by this chapter.

(e) Food products, meals, soft drinks, and candy for human consumption are exempted from the taxes imposed by this chapter if:

(1) served by a public or private school, school district, student organization, or parent-teacher association under an agreement with the proper school authorities in an elementary or secondary school during the regular school day or by a parent-teacher association during a fund-raising sale the proceeds of which do not benefit an individual;

(2) sold by a church or at a function of a church; or

(3) served to a patient or inmate of a hospital or other institution licensed by the state for the care of humans.

(f) Food products, candy, carbonated beverages, and diluted juices are exempted from the taxes imposed by this chapter if sold at an exempt sale qualifying under this subsection or if stored or used by the purchaser of the item at the exempt sale. A sale is exempted under this subsection if:

(1) the sale is made by a person under 18 years old who is a member of a nonprofit organization devoted to the exclusive purpose of education or religious or physical training or by a group associated with a public or private elementary or secondary school;

(2) the sale is made as a part of a fund-raising drive sponsored by the organization or group; and

(3) all net proceeds from the sale go to the organization or group for its exclusive use.

[Acts 1981, 67th Leg., p. 1562, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1040, ch. 235, art. 7, § 4(a), eff. Sept. 1, 1983.]

#### § 151.315. Water

Water is exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1563, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.316. Agricultural Items

The following items are exempted from the taxes imposed by this chapter:

(1) horses, mules, and work animals;

- (2) animal life the products of which ordinarily constitute food for human consumption;
- (3) feed for farm and ranch animals;
- (4) feed for animals that are held for sale in the regular course of business;
- (5) seeds and annual plants the products of which:

- (A) ordinarily constitute food for human consumption; or

- (B) are to be sold in the regular course of business;

- (6) fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or employed on a farm or ranch in the production of:

- (A) food for human consumption;

- (B) feed for animal life; or

- (C) other agricultural products to be sold in the regular course of business;

- (7) fertilizer;

- (8) machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:

- (A) food for human consumption;

- (B) grass;

- (C) feed for animal life; or

- (D) other agricultural products to be sold in the regular course of business; and

- (9) machinery and equipment exclusively used in the processing, packing, or marketing of agricultural products by the original producer at a location operated by the original producer exclusively for processing, packing, or marketing the producer's own products.

[Acts 1981, 67th Leg., p. 1563, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.317. Gas and Electricity**

(a) Gas and electricity are exempted from the taxes imposed by this chapter except when sold for commercial use.

(b) The sale, production, distribution, lease, or rental of, and the use, storage, or other consumption in this state of, gas and electricity, except when sold for residential or commercial use, are exempted from the taxes imposed by a city under the Local Sales and Use Tax Act, unless sales for residential use are further exempted by the city as provided by the Local Sales and Use Tax Act.

(c) In this section:

(1) "Residential use" means use in a family dwelling or in a multifamily apartment or housing complex or building or a part of a building occupied as a home or residence.

(2) "Commercial use" means use by a person engaged in selling, warehousing, or distributing a commodity or a professional or personal service, but does not include use by a person engaged in:

- (A) processing tangible personal property for sale as tangible personal property;

- (B) exploring for, or producing and transporting, a material extracted from the earth;

- (C) agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation; or

- (D) electrical processes such as electroplating, electrolysis, and cathodic protection.

[Acts 1981, 67th Leg., p. 1563, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.318. Property Used in Manufacturing**

(a) The following items are exempted from the taxes imposed by this chapter:

- (1) tangible personal property that will become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale; and

- (2) tangible personal property used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation.

(b) The exemption includes chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable.

(c) The exemption does not include:

- (1) machinery, equipment, or replacement parts or their accessories having a useful life when new in excess of six months;

- (2) intraplant transportation equipment, maintenance or janitorial supplies or equipment, or other machinery, equipment, materials, or supplies that are used incidentally in a manufacturing, processing, or fabrication operation;

- (3) hand tools; or

- (4) office equipment or supplies, equipment or supplies used in sales or distribution activities, research or development of new products, or transportation activities, or other tangible personal property not used in an actual manufacturing, processing, or fabrication operation.

(d) In this section, "manufacturing" includes each operation beginning with the first stage in the production of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) that it has when transferred by the manufacturer to another.

[Acts 1981, 67th Leg., p. 1564, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.319. Newspapers and Property Used in Newspaper Publication**

(a) A newspaper sold or distributed by individual copy or by subscription is exempted from the taxes imposed by this chapter.

(b) A transaction involving a sale of a newspaper that has been produced, fabricated, or printed to the special order of a customer is exempted from the taxes imposed by this chapter if:

(1) the customer is responsible for gathering substantially all of the information contained in the newspaper and for formulating the design, layout, and format of the newspaper; and

(2) the customer would be entitled to the exemption provided by Subsection (d) of this section if the customer had a printing facility capable of processing and printing the newspaper and printed and processed the newspaper.

(c) A transaction involving the sale of a handbill, circular, flyer, advertising supplement, or similar item that is printed to the special order of a customer is exempted from the taxes imposed by this chapter if the item is printed for the exclusive purpose of being distributed as a part of a newspaper, is actually distributed as a part of the newspaper, and is delivered to the person who is responsible for the distribution of the newspaper in which the item is distributed and not to the customer.

(d) The following items are exempted from the taxes imposed by this chapter:

(1) tangible personal property that enters into and becomes an ingredient or component part of a newspaper, whether or not the newspaper is printed for ultimate sale in this state;

(2) tangible personal property used or consumed in or during a phase of actual printing or processing of a newspaper if the use of the property is necessary or essential to the processing or printing operation; and

(3) chemicals, catalysts, and other materials that are used for the purpose of producing a chemical or physical change or removing impurities during the printing or processing of a newspaper or are used for placing a newspaper in its final distributable form.

(e) the following items are not exempted by Subsection (d) of this section:

(1) machinery or equipment or their accessories or replacement parts having a useful life when new in excess of six months;

(2) intraplant transportation equipment, maintenance or janitorial supplies or equipment, or other machinery, equipment, materials, or supplies that are used incidentally to printing or processing;

(3) hand tools; or

(4) office equipment or supplies; equipment or supplies used in sales, distribution, or transportation activities, or in gathering information; or other tangible personal property used by a newspaper printer in an activity other than the actual printing and processing operation.

(f) In this section, "newspaper" means a publication that is printed on newsprint, the average sales price of which for each copy over a 30-day period does not exceed 75 cents, and that is printed and distributed at a daily, weekly, or other short inter-

val for the dissemination of news of a general character and of a general interest. "Newspaper" does not include a magazine, handbill, circular, flyer, sales catalog, or similar printed item unless the printed item is printed for distribution as a part of a newspaper and is actually distributed as a part of a newspaper. For the purposes of this section, an advertisement is news of a general character and of a general interest. Notwithstanding any of the above, the word "newspaper" includes a publication containing articles and essays of general interest by various writers and advertisements which is (1) produced for the operator of a licensed and certified carrier of persons and (2) distributed by the operator to its customers during their travel on the carrier.

[Acts 1981, 67th Leg., p. 1565, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4770, ch. 840, § 4, eff. Aug. 29, 1983.]

#### § 151.320. Magazines

(a) Subscriptions to magazines that are sold for a semiannual or longer period and are entered as second class mail are exempted from the taxes imposed by this chapter.

(b) "Magazine" means a publication that is usually paperbacked and sometimes illustrated, that appears at a regular interval, and that contains stories, articles, and essays by various writers and advertisements.

[Acts 1981, 67th Leg., p. 1566, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.321. Packaging Supplies and Wrapping

(a) Internal and external wrapping, packing, and packaging supplies are exempted from the taxes imposed by this chapter if sold to a person for use, stored for future use, or used in wrapping, packing, or packaging tangible personal property for the purpose of furthering the sale of the property wrapped, packed, or packaged or for the purpose of furthering the distribution of a newspaper whether or not the newspaper is distributed without charge.

(b) In this section, "wrapping," "packing," and "packaging supplies and materials" include:

(1) wrapping paper, wrapping twine, bags, cartons, crates, crating material, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and

(2) excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay, laths, and other property used inside a package in order to shape, form, stabilize, preserve, or protect the contents.

[Acts 1981, 67th Leg., p. 1566, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.322. Containers

(a) The following are exempted from the taxes imposed by this chapter:

(1) a container sold with its contents if the sales price of the contents is not taxed under this chapter;

(2) a nonreturnable container sold without contents to a person who fills the container and sells the contents and the container together; and

(3) a returnable container sold with its contents or resold for refilling.

(b) In this section:

(1) "Returnable container" means a container of a kind customarily returned for reuse by the buyer of the contents.

(2) "Nonreturnable container" means a container other than a returnable container.

[Acts 1981, 67th Leg., p. 1566, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.323. Telephone and Telegraph

There are exempted from the taxes imposed by this chapter the receipts from the sale, production, distribution, lease or rental of and the storage, use, or other consumption in this state of telephone and telegraph service.

[Acts 1981, 67th Leg., p. 1566, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.324. Equipment Used Elsewhere for Mineral Exploration or Production

(a) The following items are exempted from the sales tax imposed by Subchapter C of this chapter:<sup>1</sup>

(1) drill pipe, casing, tubing, and other pipe used for the exploration for or production of oil, gas, sulphur, or other minerals offshore not in this state; and

(2) tangible personal property exclusively used for the exploration for or production of oil, gas, sulphur, or other minerals offshore not in this state.

(b) Drilling equipment that is used for the exploration for or production of oil, gas, sulphur, or other minerals, that is built for exclusive use outside this state, and that is, on completion, removed forthwith from this state is exempted from the taxes imposed by this chapter.

(c) The delivery of items exempted by this section to the purchaser or lessee in this state does not disqualify the purchaser or lessee from the exemption if the property is removed from the state by any means, including by the use of the purchaser's or lessee's own facilities.

(d) The shipment to a place in this state of equipment exempted by this section for further assembly or fabrication does not disqualify the purchaser or lessee from the exemption if on completion of the further assembly or fabrication the equipment is removed forthwith from this state. This section applies to a sale that may occur when the equipment exempted is further assembled or fabricated if

on completion the equipment is removed forthwith from the state.

[Acts 1981, 67th Leg., p. 1567, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup>Section 151.051 et seq.

§ 151.325. Solar Energy Devices

(a) Except as provided by Subsection (c) of this section, a solar energy device is exempted from the taxes imposed by this chapter.

(b) "Solar energy device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy, and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(c) A solar energy device, other than a site-built solar energy device, is not exempted from the taxes imposed by this chapter if the device does not meet the rating and certification standards adopted by this state.

[Acts 1981, 67th Leg., p. 1567, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., pp. 4133, 4134, ch. 650, §§ 7, 8, eff. Aug. 29, 1983.]

§ 151.326. Broadcasting Stations

(a) Film, tape, photographs, transparencies, and graphic art material that is sold to or by or used by a licensed radio or television station subject to the regulatory jurisdiction of the Federal Communications Commission and that is used or consumed in or during a phase of broadcasting operations or program services are exempted from the taxes imposed by this chapter.

(b) Machinery, equipment, and replacement parts and accessories for machinery and equipment having a useful life when new in excess of six months are not exempted by this section.

[Acts 1981, 67th Leg., p. 1567, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.327. Motion Picture Films

A motion picture film leased or licensed to or by a motion picture theater or to or by a licensed television station is exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1567, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.328. Aircraft

(a) Aircraft are exempted from the taxes imposed by this chapter if:

(1) sold to a person using the aircraft as a certificated or licensed carrier of persons or property;

(2) sold to a person and used for the exclusive purpose of training or instructing pilots in a licensed course of instruction; or

(3) sold to a foreign government or to persons who are not residents of this state.

(b) Repair services to aircraft operated by a certificated or licensed carrier of persons or property are exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1567, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.329. Certain Ships and Ship Equipment

The following items are exempted from the taxes imposed by this chapter:

(1) materials, equipment, and machinery that enter into and become component parts of a ship or vessel that is of eight or more tons displacement and is:

(A) used exclusively and directly in a commercial enterprise, including commercial fishing; or

(B) used commercially as a vessel for pleasure fishing by individuals as paying passengers on the vessel;

(2) a ship or vessel of eight or more tons displacement, that is used exclusively and directly in a commercial enterprise and is sold by the vessel's builder;

(3) materials and labor used in repairing, renovating, or converting a ship or vessel that is of eight or more tons displacement and that is used exclusively and directly in a commercial enterprise; and

(4) materials and supplies purchased by the owner or operator of a ship or vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies:

(A) are loaded on the ship or vessel and used in the maintenance and operation of the ship or vessel; or

(B) enter into and become component parts of the ship or vessel.

[Acts 1981, 67th Leg., p. 1568, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.330. Interstate Shipments and Common Carriers

(a) The sale of tangible personal property that under the sales contract is shipped to a point outside this state is exempted from the sales tax imposed by Subchapter C of this chapter<sup>1</sup> if the shipment is made by the seller by means of:

(1) the facilities of the seller;

(2) delivery by the seller to a carrier for shipment to a consignee at a point outside this state; or

(3) delivery by the seller to a customs broker or forwarding agent for shipment outside this state.

(b) The sale of tangible personal property to a common carrier is exempted from the sales tax imposed by Subchapter C of this chapter if the tangible personal property:

(1) is shipped by the seller, freight charges paid in advance or collect, via the purchasing carrier to a point outside this state; and

(2) is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier outside this state.

(c) The use of tangible personal property acquired outside this state and moved into this state for use as a licensed and certificated carrier of persons or property is exempted from the use tax imposed by Subchapter D of this chapter.<sup>2</sup>

(d) The temporary storage of tangible personal property acquired outside this state and then moved into this state is exempted from the use tax imposed by Subchapter D of this chapter if after being moved into this state the property is stored here temporarily and:

(1) is used solely outside this state; or

(2) is physically attached to or incorporated into other tangible personal property that is used solely outside this state.

(e) The storage or use of tangible personal property acquired outside this state for use as a repair or replacement part for and actually affixed in this state to a self-propelled vehicle that is a licensed and certificated common carrier of persons or property is exempted from the use tax imposed by Subchapter D of this chapter.

(f) The storage, use, or other consumption of tangible personal property that is acquired outside this state is exempted from the use tax imposed by Subchapter D of this chapter if the sale, use, or storage of the property would be exempted from the taxes imposed by this chapter had it been sold, leased, or rented in this state.

[Acts 1981, 67th Leg., p. 1568, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 151.051 et seq.

<sup>2</sup> Section 151.101 et seq.

#### § 151.331. Rolling Stock; Train Fuel and Supplies

Rolling stock, locomotives, and fuel and supplies essential to the operation of locomotives and trains are exempted from the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1569, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.332. Certain Sales by Senior Citizen Organizations

(a) There are exempted from the sales tax imposed by Subchapter C of this chapter<sup>1</sup> the receipts from the sale of tangible personal property that has been manufactured, produced, made, or assembled exclusively by a person 65 years old or older and that is sold at a qualified sale. A sale under this section qualifies for the exemption only if it is made as a part of a fund-raising drive held or sponsored by a nonprofit organization created for the sole

purpose of providing assistance to elderly persons. All of the net proceeds derived from sales made during the fund-raising drive must go to the organization, to the persons who manufactured, produced, made, or assembled the items sold, or to both. An organization created for the purpose of providing assistance to the elderly is entitled to conduct not more than four separate tax exempt fund-raising drives during each calendar year, and the aggregate number of days during a calendar year during which one or more tax exempt fund-raising drives may be held by the organization is 20. Any sale occurring after the end of the fourth separate fund-raising drive in a calendar year or after the 20th day on which a fund-raising drive is held in a calendar year is not exempted by this section.

(b) There are exempted from the taxes imposed by this chapter the use, storage, or other consumption in this state of tangible personal property by a purchaser at a sale exempted by this section.

[Acts 1981, 67th Leg., p. 2771, ch. 752, § 7(b), eff. Jan. 1, 1982.]

<sup>1</sup> Section 151.051 et seq.

**§ 151.333. Items Sold to or Used by Development Corporations**

*Text as added by Acts 1983, 68th Leg., p. 1038, ch. 235, art. 7, § 1(a)*

(a) A taxable item sold, leased, or rented to or stored, used, or consumed by a nonprofit corporation formed under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is exempted from the taxes imposed by this chapter if the item is for the exclusive use and benefit of the nonprofit corporation.

(b) The exemption provided by this section does not apply to an item that is a project or a part of a project that is to be leased, sold, or lent by the nonprofit corporation.

[Acts 1983, 68th Leg., p. 1038, ch. 235, art. 7, § 1(a), eff. Sept. 1, 1983.]

*For texts as added by Acts 1983, 68th Leg., p. 4789, ch. 841, § 2, and Acts 1983, 68th Leg., p. 5052, ch. 913, § 1, see §§ 151.333, post*

**§ 151.333. Equipment Used in Enterprise Zone**

*Text as added by Acts 1983, 68th Leg., p. 4789, ch. 841, § 2*

(a) The following items are exempted from the taxes imposed by this chapter:

(1) equipment or machinery sold to a qualified business, as defined by the Texas Enterprise Zone Act,<sup>1</sup> for use in a state-federal enterprise zone; and

(2) building materials sold to a person for use in remodeling, rehabilitating, or constructing a structure in a state-federal enterprise zone.

(b) The exemption applies to a purchase made or the use, storage, or other consumption of the exempted item on or after the first day of the state fiscal year that begins after the designation of the state-federal enterprise zone.

(c) This section takes effect on the first day of the state fiscal year following the date on which the governor certifies that a federal enterprise zone law has been enacted.

[Acts 1983, 68th Leg., p. 4789, ch. 841, § 2.]

<sup>1</sup> Civil Statutes, art. 5190.7.

*For texts as added by Acts 1983, 68th Leg., p. 1038, ch. 235, art. 7, § 1(a), and Acts 1983, 68th Leg., p. 5052, ch. 913, § 1, see §§ 151.333, ante and post*

**§ 151.333. Agribusiness Items**

*Text as added by Acts 1983, 68th Leg., p. 5052, ch. 913, § 1*

There are exempted from the tax imposed by this chapter bins used exclusively as containers in transporting fruit or vegetables from the field or place of harvest to a location where the items are processed, packaged, or marketed.

[Acts 1983, 68th Leg., p. 5052, ch. 913, § 1, eff. Aug. 29, 1983.]

*For texts as added by Acts 1983, 68th Leg., p. 1038, ch. 235, art. 7, § 1(a), and Acts 1983, 68th Leg., p. 4789, ch. 841, § 2, see §§ 151.333, ante*

**§§ 151.334, 151.335. Blank**

**§ 151.336. Certain Coins and Precious Metals**

(a) The sale of gold, silver, or numismatic coins or of platinum, gold, or silver bullion is exempted from the sales tax imposed by Subchapter C of this chapter<sup>1</sup> at any sale to a purchaser in which the total sales price of all the items sold equals \$10,000 or more.

(b) An item purchased at a sale exempted by Subsection (a) of this section is exempted from the use tax imposed by Subchapter D of this chapter until<sup>2</sup> the item is subsequently transferred to a different owner.

[Acts 1983, 68th Leg., p. 2509, ch. 440, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Section 151.051 et seq.

<sup>2</sup> Section 151.101 et seq.

**§ 151.337. Sales by or to Indian Tribes**

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, a tribal council or a business owned by a tribal council of an Indian tribe for which a reservation is established in this state is exempted from the taxes imposed by this chapter.

(b) A taxable item sold, leased, or rented by a tribal council or a business owned by a tribal council of an Indian tribe for which a reservation is estab-

lished in this state is exempted from the taxes imposed by this chapter if the item is:

- (1) made by a member of the Indian tribe;
- (2) a cultural artifact of the Indian tribe; and
- (3) sold at a location within the boundaries of the reservation.

(c) The storage, use, or consumption of a taxable item acquired in a transaction exempted by Subsection (b) of this section is exempted from the use tax imposed by Subchapter D of this chapter<sup>1</sup> until the item is resold or subsequently transferred.

[Acts 1983, 68th Leg., p. 4870, ch. 859, § 2, eff. Sept. 1, 1983.]

<sup>1</sup> Section 151.101 et seq.

[Sections 151.338 to 151.400 reserved for expansion]

#### SUBCHAPTER I. REPORTS, PAYMENTS, AND METHODS OF REPORTING

##### § 151.401. Tax Due Dates

(a) The taxes imposed by this chapter are due and payable to the comptroller on or before the 20th day of the month following the end of each calendar month unless a taxpayer qualifies as a quarterly filer under Subsection (b) of this section or unless the taxpayer prepays the tax on a quarterly basis as permitted by Section 151.424 of this code.

(b) If a taxpayer owes less than \$500 for a calendar month or \$1,500 for a calendar quarter, the taxes are due and payable on the 20th day of the month following the end of the calendar quarter.

[Acts 1981, 67th Leg., p. 1569, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2779, ch. 752, § 10, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 1362, ch. 281, § 1, eff. Oct. 1, 1983.]

##### § 151.402. Tax Report Dates

A tax report required by this chapter for a reporting period is due on the same date that the tax payment for the period is due as provided by Section 151.401 of this code.

[Acts 1981, 67th Leg., p. 1569, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 151.403. Who Must File a Report

(a) A person subject to the sales tax shall file a tax report.

(b) A retailer engaged in business in this state as provided by Section 151.107 of this code shall file a tax report with respect to the use tax.

(c) A person who acquires a taxable item, the storage, use, or consumption of which is subject to the use tax, shall file a tax report if the person did not pay the use tax to a retailer.

[Acts 1981, 67th Leg., p. 1569, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.404. Repealed by Acts 1983, 68th Leg., p. 1365, ch. 281, § 6, eff. Oct. 1, 1983

##### § 151.405. Other Due Dates Set by Comptroller

The comptroller may require a seller, retailer, or purchaser to file a return or pay the taxes imposed by this chapter for a period other than a monthly period if necessary to ensure the payment or to facilitate the collection of the taxes due.

[Acts 1981, 67th Leg., p. 1570, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1363, ch. 281, § 2, eff. Oct. 1, 1983.]

##### § 151.406. Contents and Form of Report

(a) Except as provided by Section 151.407 of this code, a tax report required by this chapter must:

(1) for sales tax purposes, show the amount of the total receipts of a seller for the reporting period;

(2) for use tax purposes, show the amount of the total receipts from sales by a retailer of taxable items during the reporting period for storage, use, or consumption in this state;

(3) show the amount of the total sales prices of taxable items that are subject to the use tax during the reporting period and that were acquired for storage, use, or consumption in this state by a purchaser who did not pay the tax to a retailer;

(4) show the amount of the taxes due for the reporting period; and

(5) include other information that the comptroller determines to be necessary for the proper administration of this chapter.

(b) The comptroller by rule may determine the manner of reporting gross proceeds from taxable rentals and leases of tangible personal property.

(c) The report must be in the form as prescribed by the comptroller.

(d) A tax report must be signed by the person required to file it or by the person's authorized agent.

[Acts 1981, 67th Leg., p. 1570, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 151.407. Special Use Tax Reports

(a) The comptroller may require any person or class of persons who have in their possession or custody information relating to the sale of a taxable item, the storage, use, or consumption of which is subject to the use tax, to file a report.

(b) A report required under this section must:

- (1) be filed at the time required by the comptroller; and

- (2) contain the name and address of the purchaser of the tangible personal property, the sales price of the property, the date of the sale, and other information required by the comptroller.

[Acts 1981, 67th Leg., p. 1570, ch. 389, § 1, eff. Jan. 1, 1982.]



**§ 151.408. Accounting Basis for Reports**

A taxpayer whose regular books are kept on a cash basis, accrual basis, or some other generally recognized accounting basis that accurately reflects the operation of the business may file the tax reports required by this chapter on the same basis that is used for the taxpayer's regular books.

[Acts 1981, 67th Leg., p. 1570, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.409. Reports and Payments: Where Made**

A tax report or tax payment shall be delivered to the office of the comptroller.

[Acts 1981, 67th Leg., p. 1570, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.410. Method of Reporting Sales Tax: General Rule**

A seller shall compute the sales tax imposed by Subchapter C of this chapter<sup>1</sup> to be paid to the comptroller by multiplying the percentage rate of the sales tax times the total receipts of the seller from all sales of taxable tangible personal property and of taxable services.

[Acts 1981, 67th Leg., p. 1571, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup>Section 151.051 et seq.

**§ 151.411. Method of Reporting: Sellers Having Sales Below Taxable Amount**

(a) If not less than 50 percent of the total receipts of a seller from the sale of tangible personal property and taxable services come from separate transactions in which the sales price is 12 cents or less, the seller may exclude the receipts from these transactions when reporting and paying the sales tax.

(b) A seller may not exclude any receipts from sales as permitted under Subsection (a) of this section unless the seller has received from the comptroller before the filing of the tax report written approval allowing the exclusion, and all receipts from sales of taxable tangible personal property and taxable services are subject to the tax until the approval is granted.

(c) The comptroller shall approve the reporting and computation of the sales tax as permitted under Subsection (a) of this section by a seller if the seller qualifies for the exclusion and if the seller submits to the comptroller satisfactory evidence that the seller can and will maintain records adequate to substantiate the authorized exclusion.

[Acts 1981, 67th Leg., p. 1571, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.412. Optional Method of Reporting: Percentage of Sales**

(a) A seller who is a retail grocer, a seller who operates a separate grocery department having separate records that are separately auditable, or any other seller whose taxable receipts from the sale of

taxable items are less than 10 percent of the total receipts of the seller may determine the total taxable receipts of the grocer, separate grocery department, or other seller by:

(1) adding the amount of all invoices for merchandise sold to the seller during the preceding calendar or fiscal year to obtain the total sum of merchandise purchased;

(2) adding the amount of all invoices for exempt merchandise sold to the seller during the preceding calendar or fiscal year to obtain the total sum of exempt merchandise purchased;

(3) dividing the sum obtained under Subdivision (2) of this subsection by the sum obtained under Subdivision (1) of this subsection to obtain a percentage relationship;

(4) multiplying the percentage obtained under Subdivision (3) of this subsection times the total sales by the seller for the reporting period to obtain the total nontaxable sales of the seller; and

(5) subtracting the total nontaxable sales of the seller obtained under Subdivision (4) of this subsection from the total sales by the seller during the reporting period to obtain the total taxable receipts of the seller from sales of tangible personal property.

(b) A seller determining taxable receipts as provided by Subsection (a) of this section shall add to the total taxable receipts the sales prices of all purchases made by the seller that are subject to the use tax and on which the use tax has not been paid.

(c) If the comptroller audits a seller who qualifies for and uses the method of reporting allowed by this section and determines that the actual tax liability of the seller computed on the actual taxable receipts of the seller differs from the amount reported and paid under this section, the comptroller shall collect the difference due to the state, if any, or refund or credit the seller with the difference that is an overpayment to the state, if any.

(d) The comptroller may not assess a penalty or interest against a seller because of an underpayment of the actual tax due disclosed by an audit under Subsection (c) of this section unless the audit discloses wilful evasion of the tax or fraud. The state may not pay interest on an overpayment disclosed by an audit under Subsection (c) of this section.

[Acts 1981, 67th Leg., p. 1571, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.413. Optional Method of Reporting: Small Grocers**

(a) A seller who is a retail grocer and whose annual total receipts do not exceed \$100,000 may pay the taxes imposed by this chapter by multiplying 15 percent times the total receipts of the seller to obtain the amount of taxable receipts.

(b) A state audit of a retailer electing to report his taxable receipts as provided by this section is

limited to determining whether or not the grocer is eligible to use this method. No additional tax may be assessed or a refund or credit granted because of a showing that the tax liability of the retail grocer electing this method of reporting differs or would differ under any other method of reporting.

(c) A retail grocer who elects to report under this section shall continue to report as provided by this section for three years unless the grocer's total receipts for a year exceed \$100,000.

(d) If a retail grocer electing to report under this section has gross receipts in excess of \$100,000 for a year, the grocer is ineligible to continue reporting under this section beginning on the first day of the calendar month after the month in which the limitation was exceeded, shall report the ineligibility to the comptroller, and shall immediately cease to use the method of reporting permitted by this section.

(e) Subsection (b) of this section does not apply to audits or the tax liability of a retail grocer who fails to report his ineligibility to the comptroller as required by Subsection (d) of this section.

[Acts 1981, 67th Leg., p. 1572, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.414. "Retail Grocer" Defined

In this subchapter, "retail grocer" means a retail vendor who sells food for human consumption off the premises, together with household supplies and nondurable household goods.

[Acts 1981, 67th Leg., p. 1572, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.415. Assessment of Penalties and Interest Against Seller Using Optional Method of Reporting

The comptroller may assess a penalty and interest against a seller using an optional method of reporting under Section 151.412 or Section 151.413 of this code if the seller fails to file a tax report on or before its due date or fails to remit the correct amount of tax due with the report. This section prevails over Section 151.412(d) and Section 151.413(b) of this code.

[Acts 1981, 67th Leg., p. 1572, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.416. Commingled Receipts and Tax

A seller who has an accounting system under which the taxes collected under this chapter are commingled with the receipts from the sales of taxable items may compute his taxable receipts by:

- (1) subtracting from the total receipts of the seller the receipts from the sales of items that are exempted or are specifically excluded from the taxes imposed by this chapter to obtain a remainder consisting of the commingled receipts from taxable sales and the taxes collected; and

- (2) dividing this remainder by 1.04 to obtain a quotient that is the taxable receipts that may be reported under Section 151.410 of this code.

[Acts 1981, 67th Leg., p. 1573, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.417. Direct Payment of Tax by Purchaser

(a) The holder of a direct payment permit issued by the comptroller may give a blanket exemption certificate to sellers who sell, lease, or rent taxable items to the holder of the direct payment permit. The blanket exemption certificate covers all future sales of taxable items to the permit holder and relieves the seller of the obligation of collecting the taxes imposed by this chapter from the permit holder.

(b) A blanket exemption certificate given under this section must contain the direct payment permit number and the statement that the direct payment permit holder agrees to accrue and pay to this state all taxes that are or may become due on the taxable items sold under the exemption certificate to the permit holder.

[Acts 1981, 67th Leg., p. 1573, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.418. Issuance of Direct Payment Permit

(a) The comptroller shall issue a direct payment permit to an applicant for the permit who qualifies as provided by Section 151.419 of this code.

(b) The comptroller is the sole judge of an applicant's qualifications, and the comptroller's refusal to issue a permit to an applicant is not appealable.

(c) An applicant for a direct payment permit who has been denied the issuance of a permit may:

- (1) request permission from the comptroller to submit an amended application; or
- (2) submit a new application for a direct payment permit after a reasonable period after the denial of the original application.

[Acts 1981, 67th Leg., p. 1573, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.419. Application for Direct Payment Permit: Qualifications

(a) A person desiring a direct payment permit must file with the comptroller a written application for the permit.

- (b) The application must be accompanied with:
  - (1) an agreement that is signed by the applicant or a responsible officer of an applicant corporation, that is in a form prescribed by the comptroller, and that provides that the applicant agrees to:

(A) accrue and pay all taxes imposed by Subchapter D of this chapter<sup>1</sup> on the storage and use of all taxable items sold to or leased or rented by the permit holder unless the items are exempted from the taxes imposed by this chapter;

(B) pay the imposed taxes monthly on or before the 20th day of the month following the end of each calendar month; and

(C) waive the discount permitted by Section 151.423 of this code on the payment of all taxes under the direct payment permit only;

(2) a description, in the amount of detail that the comptroller requires, of the accounting method by which the applicant proposes to differentiate between taxable and exempt transactions; and

(3) records establishing that the applicant is a responsible person who annually purchases taxable items that have a value when purchased of \$800,000 or more excluding the value of taxable items for which resale certificates were or could have been given.

[Acts 1981, 67th Leg., p. 1573, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 849, ch. 197, § 1, eff. May 24, 1983; Acts 1983, 68th Leg. p. 1363, ch. 281, § 3, eff. Oct. 1, 1983.]

<sup>1</sup>Section 151.101 et seq.

Section 2 of Acts 1983, 68th Leg., p. 850, ch. 281, provides:

"A person who qualified for a direct payment permit issued under Sections 151.417 through 151.419, Tax Code, as effective immediately before the effective date of this Act and who holds the permit on the effective date of this Act is not disqualified from using the permit until the permit is canceled by the comptroller as provided by Section 151.422, Tax Code."

#### § 151.420. Revocation of Direct Payment Permit

(a) A person to whom a direct payment permit has been issued holds the permit as a matter of revocable privilege and not as a matter of right. The comptroller on his own initiative may cancel a direct payment permit, and the cancellation is not appealable.

(b) A person whose direct payment permit is canceled by the comptroller is entitled to written notice of the cancellation, which shall be sent by the comptroller by registered mail.

[Acts 1981, 67th Leg., p. 1574, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.421. Voluntary Relinquishment of Direct Payment Permit

(a) The holder of a direct payment permit may notify the comptroller that the direct payment permit is to be voluntarily relinquished.

(b) A direct payment permit and the direct payment agreement remain valid and enforceable until the comptroller issues a termination notice.

[Acts 1981, 67th Leg., p. 1574, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.422. Cancellation or Termination of Direct Payment Permit: Duty of Permit Holder

(a) On the receipt of a notice issued under Section 151.420 of this code canceling a direct payment permit or of a notice issued under Section 151.421 of

this code terminating a direct payment permit, the person who held the permit shall immediately notify each seller to whom a blanket exemption certificate has been given that the exemption certificate is no longer valid.

(b) The failure of a person to notify a seller as required by Subsection (a) of this section is a failure and refusal to pay the taxes imposed by this chapter by the person required to make the notification.

[Acts 1981, 67th Leg., p. 1574, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.423. Reimbursement to Taxpayer for Tax Collections

A taxpayer may deduct and withhold one percent of the amount of taxes due from the taxpayer on a timely return as reimbursement for the cost of collecting the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 1574, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1364, ch. 281, § 4, eff. Oct. 1, 1983.]

#### § 151.424. Discount for Prepayments

(a) A taxpayer who prepays the taxpayer's tax liability on the basis of a reasonable estimate of the tax liability for a quarter in which a prepayment is made or for a month in which a prepayment is made may deduct and withhold 1.25 percent of the amount of the prepayment in addition to the amount permitted to be deducted and withheld under Section 151.423 of this code. A reasonable estimate of the tax liability must be at least 90 percent of the tax ultimately due or the amount of tax paid in the same quarter, or month, if a monthly preparer, in the last preceding year. Failure to prepay a reasonable estimate of the tax will result in the loss of the entire prepayment discount.

(b) In order to qualify for the deduction permitted by Subsection (a) of this section, the taxpayer must make the tax prepayment:

(1) on or before the 15th day of the second month of the calendar quarter for which the prepayment is made if the taxpayer pays the tax quarterly; or

(2) on or before the 15th day of the month for which the prepayment is made if the taxpayer pays the tax monthly.

(c) A taxpayer who prepays the tax liability as permitted by this section must file a report when due as provided by this chapter. The amount of a prepayment made by a taxpayer under this section shall be credited against the amount of actual tax liability of the taxpayer as shown on the tax report of the taxpayer. If there is a tax liability owed by the taxpayer in excess of the prepayment credit, the taxpayer shall send to the comptroller the remaining tax liability at the time of filing the quarterly or monthly report. The taxpayer is entitled to the deduction permitted under Section 151.423 of this code on the amount of the remaining tax liability.

(d) If the amount of a prepayment exceeds the actual tax liability, the excess of the prepayment shall be credited against future tax liability of the taxpayer or refunded to the taxpayer as provided by Subchapter C of Chapter 111 of this code.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1574, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1364, ch. 281, § 5, eff. Oct. 1, 1983.]

<sup>1</sup> Section 111.101 et seq.

#### § 151.425. Forfeiture of Discount or Reimbursement

If a taxpayer fails to file a report required by this chapter when due or to pay the tax when due, the taxpayer forfeits any claim to a deduction or discount allowed under Section 151.423 or Section 151.424 of this code.

[Acts 1981, 67th Leg., p. 1575, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.426. Credits and Refunds for Bad Debts, Returned Merchandise, and Repossessions

(a) A seller may withhold the payment of the tax on a portion of the sales price of a taxable item that remains unpaid by the purchaser if:

- (1) during the reporting period in which the item was sold, leased, or rented the seller determines that the unpaid portion will remain unpaid;
- (2) the seller enters the unpaid portion of the sales price in the seller's books as a bad debt; and
- (3) the bad debt is claimed as a deduction for federal tax purposes during the same or a subsequent reporting period.

(b) If the portion of a debt determined to be bad under Subsection (a) of this section is paid, the seller shall report and pay the tax on the portion during the reporting period in which the payment is made.

(c) A retailer is entitled to credit or reimbursement for taxes paid on the portion of:

- (1) an account determined to be worthless and actually charged off for federal income tax purposes; or
- (2) the remaining unpaid sales price of a taxable item when the item is repossessed under a conditional sales contract.

(d) A seller is entitled to credit for the amount of taxes paid on the amount of a refund or credit made to a purchaser under a bona fide agreement in which the sales price of a taxable item is renegotiated. This credit applies to a refund or credit made under an agreement in settlement of a claim for an alleged breach of warranty on a taxable item sold by the seller to the person with whom the agreement is made.

[Acts 1981, 67th Leg., p. 1575, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1043, ch. 235, art. 7, § 6, eff. Sept. 1, 1983.]

#### § 151.427. Deduction for Property on Which the Tax is Paid and Held for Resale

(a) A seller who has paid the tax imposed by this chapter on the sales price of tangible personal property acquired for storage or use may deduct the amount of the tax paid if the seller resells, leases, or rents the item to another in the regular course of business before the seller has made any use of the property other than retaining, displaying, or demonstrating it while holding it for sale in the regular course of business.

(b) If a deduction is taken under Subsection (a) of this section, the person who sold the property to the seller may not receive a credit or refund with respect to the sale of the property to the seller.

(c) The deduction allowed by Subsection (a) of this section must be taken in accordance with any rule on the deduction made by the comptroller.

[Acts 1981, 67th Leg., p. 1576, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.428. Interest Charged by Retailer on Amounts of Taxes Financed

(a) A retailer who sells taxable items on credit or under any other deferred payment agreement and charges interest or time price differential on the amount of the credit extended for the payment of the sales price of the item and the amount of all sales taxes, and who remits the tax and files tax reports to the comptroller on the basis of the cash system of accounting, shall pay to the comptroller at the time of making each tax report under this chapter an amount calculated according to whichever of the following yields the greater amount:

- (1) one-half of the amount of interest or time price differential received by the retailer on credit extended to the purchaser for the payment of the amount of all sales taxes imposed; or
- (2)(A) the amount of interest or time price differential received by the retailer on credit extended to the purchaser for the payment of the amount of all sales taxes imposed, less
- (B) an amount of interest or time price differential at a rate of nine percent per year received on credit extended by the retailer to the purchaser for the payment of the sales tax.

(b) The deduction provided by Paragraph (B) of Subdivision (2) of Subsection (a) of this section is allowed only if the rate of interest or time price differential charged by the retailer on the credit extended for payment of the sales tax and the method of computing the interest or the time price differential are uniform with the rate charged by the retailer on the credit extended on the sales price and the method of computing the interest or time price differential.

(c) The reporting, collection, refund, and penalty provisions of this chapter and Subtitle B of this title<sup>1</sup> apply to the payments required by this section, except that Sections 151.423 and 151.424 of this code do not apply to this section.

(d) The payments required by this section are in addition to other taxes imposed by this chapter, the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), and Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 1118y, Vernon's Texas Civil Statutes).

(e) The revenue received under this section is allocated as provided by Section 151.801 of this code.

[Acts 1983, 68th Leg., p. 1039, ch. 235, art. 7, § 3(a), eff. Sept. 1, 1983.]

<sup>1</sup> Section 111.001 et seq.

[Sections 151.429 to 151.500 reserved for expansion]

SUBCHAPTER J. TAX DETERMINATIONS

§ 151.501. Determination After the Filing of a Report

If a person has filed a tax report, the comptroller may issue a deficiency determination under Section 111.008 of this code.

[Acts 1981, 67th Leg., p. 1576, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.502. Determination: Penalty

The Comptroller shall add a penalty of 25 percent of the amount of a deficiency determination if a part of the deficiency on which a determination is made is due to fraud or an intent to evade the application of this chapter or a rule made under this chapter or Chapter 111 of this code.

[Acts 1981, 67th Leg., p. 1576, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.503. Determination if No Report Filed

(a) If a person fails to file a report, the comptroller shall estimate the amount of receipts of the person subject to the sales tax, the amount of total sales prices of taxable items sold, leased, or rented by the person to another for storage, use, or consumption in this state, and the total sales prices of taxable items acquired by the person for storage, use, or consumption without the payment of the use tax to a retailer for each period or the total period for which the person failed to report as required by this chapter.

(b) The estimate required by Subsection (a) of this section may be made on any information available to the comptroller.

(c) On the basis of the estimate, the comptroller shall compute and determine the amount required to be paid to the state for each period.

(d) The comptroller shall add to the determination an amount equal to 10 percent of the amount com-

puted under Subsection (c) of this section as a penalty.

(e) A determination under this section may be issued for one or more periods, and more than one determination may be issued for a single period.

[Acts 1981, 67th Leg., p. 1576, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.504. Determination When a Business is Discontinued

If a business is discontinued, the comptroller may make a determination of tax liability under this subchapter before the date a report or tax payment is due with respect to the discontinued business.

[Acts 1981, 67th Leg., p. 1576, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.505. When Determination Becomes Final

A determination made under Section 151.501, 151.503, or 151.504 of this code becomes final on the expiration of 30 days after the day on which the determination was served by personal service or by mail, unless a petition for a redetermination is filed before the determination becomes final.

[Acts 1981, 67th Leg., p. 1577, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.506. Jeopardy Determination

(a) If the comptroller believes that the collection of a tax required to be collected and paid to the state or the amount of a determination is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the tax collection is in jeopardy. The amount determined is due and payable immediately.

(b) A determination made under this section becomes final on the expiration of 20 days after the day on which the notice of the determination was served by personal service or by mail unless a petition for a redetermination is filed before the determination becomes final.

(c) If a determination made under this section becomes final without payment of the amount of the determination being made, the comptroller shall add to the amount a penalty of 10 percent of the amount of the tax and interest.

[Acts 1981, 67th Leg., p. 1577, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 151.507. Limitations on Determination

(a) A notice of a deficiency determination must be personally served or mailed within the period provided by Subchapter D, Chapter 111 of this code<sup>1</sup> after the last day of the calendar month following the close of the regular reporting period of the taxpayer for which the amount is proposed to be determined or within the period provided by Subchapter D, Chapter 111 of this code after the report is filed, whichever period expires the later.

(b) If no tax report is filed, a notice of determination must be mailed or personally served within the period provided by Subchapter D, Chapter 111 of this code after the last day of the calendar month following the close of the regular reporting period of the taxpayer for which the amount is proposed to be determined.

(c) The limitations provided by Subsections (a) and (b) of this section do not apply to a determination proposed to be made:

(1) for the collection of an amount of sales tax on the sale of a taxable item if a deficiency notice has been given or is given for the collection of the use tax on the same taxable item; or

(2) for the collection of the use tax on the storage, use, or consumption of a taxable item if a deficiency notice has been or is given for the collection of the sales tax on the same taxable item.

[Acts 1981, 67th Leg., p. 1577, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 111.201 et seq.

#### § 151.508. Offsets

In making a determination, the comptroller may offset an overpayment for one or more periods against an underpayment, penalty, and interest accrued on the underpayment for the same period or one or more other periods. Any interest accrued on the overpayment shall be included in the offset.

[Acts 1981, 67th Leg., p. 1577, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.509. Petition for Redetermination

(a) A person against whom a determination has been made for taxes imposed by this chapter or any other person having a direct interest in the determination may file a petition with the comptroller requesting a redetermination of the amount of taxes claimed to be owed. The petition must be filed before the determination becomes final and not thereafter.

(b) A person petitioning for a redetermination of a determination made under Section 151.506 of this code must file, before the determination becomes final, security as the comptroller requires to ensure compliance with this chapter. The security may be sold by the comptroller in the manner provided by Section 151.611 of this code.

[Acts 1981, 67th Leg., p. 1577, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.510. Hearing on Redetermination

(a) If a petition for a redetermination is filed before the determination becomes final, the petitioner is entitled on a request stated in the petition to an oral hearing on the redetermination and to at least 20 days' notice of the time and place of the hearing.

(b) The comptroller may continue the hearing from time to time as is necessary.

[Acts 1981, 67th Leg., p. 1578, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.511. Redetermination

(a) The comptroller may decrease the amount of a determination at any time before the determination becomes final.

(b) The comptroller may increase the amount of a determination that is not final if the additional claim is asserted by the comptroller at or before a hearing on a redetermination.

(c) If an additional claim is asserted, the petitioner is entitled to a 30-day continuance of the hearing to permit the petitioner to obtain and present evidence applicable to the items on which the additional claim is based.

(d) An order or decision of the comptroller on a petition for redetermination becomes final 15 days after service on the petitioner of the notice of the order or decision.

[Acts 1981, 67th Leg., p. 1578, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.512. Interest

Unpaid taxes imposed by this chapter draw interest beginning 60 days after the date on which the tax or the amount of the tax required to be collected became due and payable to the state.

[Acts 1981, 67th Leg., p. 1578, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.513. When Payment is Required

The amount of a determination made under Section 151.501, 151.503, or 151.504 of this code is due and payable 20 days after it becomes final. If the amount of the determination is not paid within 20 days after the day the determination became final, a penalty of 10 percent of the amount of the determination exclusive of penalties and interest shall be added.

[Acts 1981, 67th Leg., p. 1578, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.514. Notices

The comptroller shall give notice of a determination made under this subchapter promptly as provided by Sections 111.008(b) and (c) of this code. Any other notice required by this subchapter shall be given in the same manner. Notices under this subchapter are effective as provided by Section 111.008(c) of this code.

[Acts 1981, 67th Leg., p. 1578, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.515. Proceedings Against Consumer

This chapter does not prohibit the comptroller from proceeding against a consumer for an amount

of tax that the consumer should have paid but failed to pay.

[Acts 1981, 67th Leg., p. 1578, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.516 to 151.600 reserved for expansion]

**SUBCHAPTER K. PROCEDURES FOR COLLECTION OF DELINQUENT TAXES**

**§ 151.601. Suit**

The comptroller may bring an action in a court of this state, another state, or the United States to collect an amount of the taxes imposed by this chapter that is due and unpaid, including penalties and interest. The action shall be prosecuted by the attorney general.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.602. Venue**

A suit brought under this subchapter against a taxpayer in a court of this state may be filed and heard in the county where the person owing the tax resides or has a place of business or in Travis County.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.603. Evidence: Comptroller's Certificate**

In an action brought under this subchapter a certificate of the comptroller showing the delinquency is prima facie evidence of the determination of the tax or the amount of the tax, of the amount of penalties and interest stated, of the delinquency of the amounts stated, and of the compliance of the comptroller with this chapter in computing and determining the amounts due.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.604. Form of Action**

A suit under this subchapter against any person for recovery of the tax is in the form of an action for debt.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.605. Writs of Attachment**

In a suit under this subchapter, no bond or affidavit is required before the issuance of a writ of attachment.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.606. Service of Process**

In a suit under this subchapter, a seller or retailer may be served with process as provided by the rules of civil procedure or by service on an agent or clerk in this state employed by the retailer or seller in a

place of business in this state maintained by the seller or retailer. If process is served on the agent or clerk of the retailer or seller, a copy of the process shall forthwith be sent by registered mail to the retailer or seller at his principal or home office.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.607. Limitation Period**

The limitation period provided by Section 111.202 of this code applies to a suit brought under this subchapter, except that the suit may be brought at any time within 3 years after a determination made under Subchapter J of this code<sup>1</sup> becomes final or within 3 years after the last recording of a lien under this title.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1044, ch. 235, art. 7, § 7, eff. Sept. 1, 1983.]

<sup>1</sup> Section 151.501 et seq.

**§ 151.608. Judgments**

(a) A judgment in favor of the state obtained in an action under this chapter may be filed for record with the county clerk of any county in the state and when filed constitutes a lien on all of the real property located in the county and belonging to the person named in the judgment as the defendant. The lien applies to all real property in the county owned by the defendant at the time of the filing or acquired by him after the filing of the judgment.

(b) The lien has the force and effect of a judgment lien for 10 years after the date of the judgment unless the lien is released or discharged before the expiration of the 10-year period.

(c) On the payment in full of the amount of a judgment obtained under this chapter, the comptroller may release the lien.

(d) A prior judgment is not a bar to a subsequent suit under this chapter for additional taxes, penalties, and interest accruing after the prior judgment if the suit is brought before the expiration of the limitation period.

(e) Execution on a judgment obtained under this chapter may issue in the same manner as an execution under other judgments, and the sale under an execution is held as provided by the rules of civil procedure and the statutes of this state.

[Acts 1981, 67th Leg., p. 1579, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.609. Notice to Holders of Assets Belonging to Delinquent**

(a) 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, the comptroller may notify personally or by registered mail any other person who:

(1) possesses or controls a credit or personal property belonging to the delinquent or the per-

son to whom the unpaid determination is made; or

(2) owes a debt to the delinquent or person to whom the unpaid determination is made.

(b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent or person to whom the unpaid determination applies.

(c) A notice under this section may be given at any time within three years after the payment becomes delinquent or within three years after the last recording of a lien filed under this title, but not thereafter.

(d) On receipt of a notice given under this section, the person receiving the notice:

(1) within 20 days after receiving the notice, shall advise the comptroller of each credit and item of personal property belonging to the delinquent or person to whom an unpaid determination applies that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person or person to whom an unpaid determination applies; and

(2) may not transfer or dispose of the credit, property, or debt possessed, controlled, or owed by the person at the time the person received the notice for a period of 60 days after receipt of the notice, unless the comptroller consents to an earlier disposal.

(e) A notice under this section that attempts to prohibit the transfer or disposal of a deposit, credit, or item of personal property possessed or controlled by a bank is not effective unless it is delivered or mailed to the office of the bank at which the deposit is carried or the credit or property is held.

(f) A person who has received a notice under this section and who violates Subsection (d)(2) of this section is liable to the state for the amount of indebtedness of the person with respect to whose obligation the notice was given to the extent of the value of the credit, personal property, or debt transferred or disposed of.

[Acts 1981, 67th Leg., p. 1580, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.610. Seizure and Sale of Property

Before the expiration of three years after a person becomes delinquent in the payment of any amount under this chapter, the comptroller may seize and sell at public auction real and personal property of the person. A seizure made to collect the sales tax is limited only to property of the vendor that is not exempt from execution.

[Acts 1981, 67th Leg., p. 1581, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.611. Notice of Sale of Seized Property

(a) The delinquent person whose property is seized under Section 151.610 of this code is entitled to written notice of the sale of the property at least 20 days before the date of the sale.

(b) The notice must:

(1) contain a description of the property to be sold, a statement of the amount of the tax, penalties, interest, and costs due, the name of the delinquent person, and a statement that unless the amount due, including costs, is paid before the time of the sale as stated in the notice, the described property, or as much of it as necessary, will be sold;

(2) be enclosed in an envelope that is addressed to the delinquent person at the person's last known address or place of business, or if the amount due is for unpaid use taxes, the envelope must be addressed to the person at the person's last known residence or place of business in this state;

(3) be deposited in the United States mail, postage prepaid; and

(4) be published for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the seized property is to be sold or, if there is no newspaper of general circulation in that county, the notice must be posted in three public places in that county for 20 days before the date set for the sale.

[Acts 1981, 67th Leg., p. 1581, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.612. Sale of Seized Property; Disposition of Proceeds

(a) The comptroller may sell at public auction, as provided in the notice, property seized under Section 151.610 of this code and may deliver to the purchaser a bill of sale for personal property sold and a deed for real property sold. A bill of sale or a deed vests in the purchaser the interest or title in the property held by the person liable for the amount.

(b) The comptroller may leave unsold property at the place of the sale at the risk of the person liable for the amount.

(c) The amount by which the proceeds from the sale exceeds the amount of taxes, penalties, interest, and costs shall be disposed of by the comptroller as follows:

(1) if before the sale of the property a person who is not the person liable for the amount and who has an interest in or lien on the property files notice of the interest or lien with the comptroller, the comptroller shall hold the amount of the excess pending a determination of the rights of respective parties in the amount of the excess by a court;

(2) if no notice is given under Subdivision (1) of this subsection and the person liable for the



amount gives a receipt for the amount of the excess, the comptroller shall return the amount of the excess to the person; or

(3) if no notice is given under Subdivision (1) of this subsection and the comptroller is unable to obtain a receipt under Subdivision (2) of this subsection, the comptroller shall deposit the amount of the excess with the treasurer who shall hold the amount as trustee for the owner subject to the order of the person liable for the amount or a successor of the person.

[Acts 1981, 67th Leg., p. 1581, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.613. Tax Collection on Termination of Business**

(a) If a seller who is liable for the payment of an amount under this chapter sells the business or the stock of goods of the business or quits the business, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt from the comptroller showing that the amount has been paid or a certificate stating that no amount is due.

(b) The purchaser of a business or stock of goods who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a business may request that the comptroller issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The comptroller shall issue the certificate or statement within 60 days after receiving the request or within 60 days after the day on which the records of the former owner of the business are made available for audit, whichever period expires later, but in either event the comptroller shall issue the certificate or statement within 90 days after the date of receiving the request.

(d) If the comptroller fails to mail the certificate or statement within the applicable period provided by Subsection (c) of this section, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

(e) A period of limitation during which the obligation of a purchaser under this section may be enforced begins when the former owner of the business sells the business or stock of goods or when a determination is made against the former owner, whichever event occurs later.

[Acts 1981, 67th Leg., p. 1582, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.614. Res Judicata**

In the determination of a suit arising under this chapter, the rule of res judicata applies only if the

liability at issue is for the same quarterly period as was at issue in a previously determined suit.

[Acts 1981, 67th Leg., p. 1582, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.615. Tax Suit Comity**

A court of this state shall recognize and enforce a liability for a sales or use tax lawfully imposed by another state if the other state extends a like comity to this state.

[Acts 1981, 67th Leg., p. 1582, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.616 to 151.700 reserved for expansion]

**SUBCHAPTER L. PROHIBITED ACTS AND CIVIL AND CRIMINAL PENALTIES**

**§ 151.701. Use of Stamps or Tokens Prohibited**

No person may use stamps or tokens for the purpose of collecting or enforcing the collection of the taxes imposed by this chapter or for any other purpose connected with the taxes.

[Acts 1981, 67th Leg., p. 1582, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.702. Collection of Tax on Amount of Federal Excise Tax**

It is a violation of this chapter if a seller collects the tax imposed by this chapter on the sale of a taxable item for which the seller includes in the amount of the sales price the amount of a tax imposed under Subtitle D or E, Title 26, United States Code.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 4001 et seq. or 5001 et seq.

**§ 151.703. Failure to Report or Pay Tax**

(a) A person who fails to file a report as required by this chapter or who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) The minimum penalty provided by Subsection (a) of this section is \$1.

(c) A delinquent tax draws interest beginning 60 days from the due date.

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 151.704. Prohibited Advertising; Criminal Penalty**

(a) A retailer commits an offense if the retailer directly or indirectly advertises, holds out, or states to a customer or to the public that the retailer:

(1) will assume, absorb, or refund a part of the tax; or

(2) will not add the tax to the sales price of a taxable item sold, leased, or rented.

(b) This section does not prohibit a utility from billing a customer in one lump-sum price including the utility sales price and the amount of the tax imposed by this chapter.

(c) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.705. Collection of Use Tax; Criminal Penalty

A retailer engaged in business in this state who violates Section 151.103 of this code commits a misdemeanor punishable by a fine of not more than \$500.

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.706. Exemption Certificate; Criminal Penalty

(a) A person commits an offense if the person gives an exemption certificate to a seller for a taxable item that the person knows, at the time of the purchase, will be used in a manner other than that expressed in the exemption certificate.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.707. Resale Certificate; Criminal Penalty

(a) A person commits an offense if the person gives a resale certificate to a seller for property that the person knows, at the time of purchase, is purchased for the purpose of use and not for the purpose of resale, lease, or rental by the person to another in the regular course of business or for transfer as an integral part of a taxable service performed in the regular course of business.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.708. Selling Without Permit; Criminal Penalty

(a) A person or officer of a corporation commits an offense if the person or corporation engages in business as a retailer in this state without a permit required by this chapter or after the permit is suspended.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.

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(c) A separate offense is committed each day that a person or officer of a corporation violates this section.

[Acts 1981, 67th Leg., p. 1583, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.709. Failure to Furnish Report or Information; Criminal Penalty

(a) A person commits an offense if the person refuses to furnish a report or other data as required by this chapter or by the comptroller as authorized by this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.

[Acts 1981, 67th Leg., p. 1584, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.710. General Criminal Penalty

Except as otherwise provided by this chapter, any violation of this chapter is a misdemeanor punishable by a fine of not more than \$500.

[Acts 1981, 67th Leg., p. 1584, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 151.711. Limitations on Prosecutions

An indictment or information for a criminal offense brought under this chapter must be presented within four years after the commission of the offense or it is barred.

[Acts 1981, 67th Leg., p. 1584, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 151.712 to 151.800 reserved for expansion]

### SUBCHAPTER M. DISPOSITION OF PROCEEDS

#### § 151.801. Disposition of Proceeds

(a) Except for the amount allocated under Subsection (b) of this section, all proceeds from the collection of the taxes imposed by this chapter shall be deposited to the credit of the general revenue fund.

(b) The amount of the proceeds from the collection of the taxes imposed by this chapter on the sale, storage, or use of lubricating and motor oils used to propel motor vehicles over the public roadways shall be deposited to the credit of the state highway fund.

(c) The comptroller shall certify the amount to be deposited to the highway fund under Subsection (b) of this section to the treasurer on the basis of available statistical data indicating the estimated average or actual consumption or sales of lubricants used to propel motor vehicles over the public roadways. If satisfactory data are not available, the comptroller may require taxpayers who make taxable sales or uses of those lubricants to report to the comptroller as necessary to make the allocation required by Subsection (b) of this section.

(d) In this section, "motor vehicle" means a trailer, a semitrailer, or a self-propelled vehicle in or by which a person or property can be transported upon a public highway. "Motor vehicle" does not include a device moved only by human power or used exclusively on stationary rails or tracks, a farm machine, a farm trailer, a road-building machine, or a self-propelled vehicle used exclusively to move farm machinery, farm trailers, or road-building machinery.

[Acts 1981, 67th Leg., p. 1584, ch. 389, § 1, eff. Jan. 1, 1982.]

**CHAPTER 152. TAXES ON SALE, RENTAL, AND USE OF MOTOR VEHICLES**

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- 152.101. Penalty for Signing False Affidavit.  
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**SUBCHAPTER G. DISPOSITION OF TAXES**

- 152.121. Amount of Tax Sent to Comptroller; Frequency of Remittance.  
152.122. Allocation of Tax.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 152.001. Definitions**

In this chapter:

- (1) "Sale" includes:  
(A) an installment and credit sale;  
(B) an exchange of property for property or money;  
(C) an exchange in which property is transferred but the seller retains title as security for payment of the purchase price; and  
(D) any other closed transaction that constitutes a sale.

(2) "Retail sale" means a sale of a motor vehicle except:

- (A) a sale in which the purchaser acquires a vehicle for the exclusive purpose of resale; or  
(B) a sale of a vehicle that is operated under and in accordance with Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

(3) "Motor Vehicle" includes:

- (A) a self-propelled vehicle designed to transport persons or property on a public highway;  
(B) a trailer and semitrailer; and  
(C) a house trailer as defined by the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

(4) "Motor Vehicle" does not include:

- (A) a device moved only by human power;  
(B) a device used exclusively on stationary rails or tracks; or  
(C) road-building machinery.

(5) "Rental" means:

(A) an agreement by the owner of a motor vehicle to give for not longer than 180 days the exclusive use of that vehicle to another for consideration;

(B) an agreement by the original manufacturer of a motor vehicle to give exclusive use of the motor vehicle to another for consideration; or

(C) an agreement to give exclusive use of a motor vehicle to another for re-rental purposes.

(6) "Lease" means an agreement, other than a rental, by an owner of a motor vehicle to give for

longer than 180 days exclusive use of the vehicle to another for consideration.

(7) "Public agency" means:

(A) a department, commission, board, office, institution, or other agency of this state or of a county, city, town, school district, hospital district, water district, or other special district or authority or political subdivision created by or under the constitution or the statutes of this state; or

(B) an unincorporated agency or instrumentality of the United States.

(8) "Gross rental receipts" means value received or promised as consideration to the owner of a motor vehicle for rental of the vehicle, but does not include:

(A) separately stated charges for insurance;

(B) charges for damages to the motor vehicle occurring during the rental agreement period;

(C) separately stated charges for motor fuel sold by the owner of the motor vehicle; or

(D) discounts.

(9) "Owner of a motor vehicle" means:

(A) a person named in the certificate of title as the owner of the vehicle; or

(B) a person who has the exclusive use of a motor vehicle by reason of a rental and holds the vehicle for re-rental.

(10) "Orthopedically handicapped person" means a person who because of a physical impairment is unable to operate or reasonably be transported in a motor vehicle that has not been specially modified.

(11) "Volunteer fire department" means a company, department, or association whose members receive no or nominal compensation and which is organized for the purpose of answering fire alarms and extinguishing fires or answering fire alarms, extinguishing fires, and providing emergency medical services.

(12) "Motor vehicle used for religious purposes" means a motor vehicle that is:

(A) designed to carry more than six passengers;

(B) sold to, rented to, or used by a church or religious society;

(C) used primarily for the purpose of providing transportation to and from a church or religious service or meeting; and

(D) not registered as a passenger vehicle and not used primarily for the personal or official needs or duties of a minister.

(13) "Farm machine" means a self-propelled motor vehicle specially adapted for use in the production of crops or rearing of livestock, including poultry, and use in feedlots and includes a self-propelled motor vehicle specially adapted for applying plant food materials, agricultural chemicals, or feed for livestock. "Farm machine" does not include any self-propelled motor vehicle specifically designed or specially adapted for the sole

purpose of transporting agricultural products, plant food materials, agricultural chemicals, or feed for livestock.

[Acts 1981, 67th Leg., p. 1586, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 5(c), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3211, ch. 553, §§ 1, 2, eff. Sept. 1, 1983.]

#### § 152.002. Total Consideration

(a) "Total consideration" means the amount paid or to be paid for a motor vehicle and its accessories attached on or before the sale, without deducting:

(1) the cost of the motor vehicle;

(2) the cost of material, labor or service, interest paid, loss, or any other expense;

(3) the cost of transportation of the motor vehicle before its sale; or

(4) the amount of manufacturers' or importers' excise tax imposed on the motor vehicle by the United States.

(b) "Total consideration" does not include:

(1) a cash discount;

(2) a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller;

(3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(4) a financing, carrying, or service charge or interest on credit extended on a motor vehicle sold under a conditional sale or other deferred payment contract;

(5) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle; or

(6) a charge for transportation of the motor vehicle after a sale.

(c) A person who is in the business of selling, renting, or leasing motor vehicles, who obtains the certificate of title to a motor vehicle, and who uses that motor vehicle for business or personal purposes may deduct its fair market value from the total consideration paid for a replacement vehicle if:

(1) the person obtains the certificate of title to the replacement motor vehicle;

(2) the person uses the replacement motor vehicle for business or personal purposes; and

(3) the replaced motor vehicle is offered for sale.

[Acts 1981, 67th Leg., p. 1587, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.003. Duties of Comptroller

(a) The comptroller may:

(1) supervise the collection of taxes imposed by this chapter; and

(2) establish rules for the determination of taxable value of motor vehicles and the administration of this chapter.

(b) The comptroller shall furnish a copy of the rules to each county tax assessor-collector.

(c) All county tax assessors-collectors shall consistently apply the rules authorized by this section to the determination of taxable value of each motor vehicle purchased in the state or taxable under the use tax levied by this chapter.

[Acts 1981, 67th Leg., p. 1588, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 152.004 to 152.020 reserved for expansion]

**SUBCHAPTER B. IMPOSITION OF TAX**

**§ 152.021. Retail Sales Tax**

(a) A tax is imposed on every retail sale of every motor vehicle sold in this state. The tax is an obligation of and shall be paid by the purchaser of the motor vehicle.

(b) The tax rate is four percent of the total consideration.

[Acts 1981, 67th Leg., p. 1588, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.022. Tax on Motor Vehicle Purchased Outside This State**

(a) A use tax is imposed on a motor vehicle purchased at retail sale outside this state and used on the public highways of this state by a Texas resident or other person who is domiciled or doing business in this state.

(b) The tax rate is four percent of the total consideration.

[Acts 1981, 67th Leg., p. 1588, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.023. Tax on Motor Vehicle Brought Into State by New Texas Resident**

(a) A use tax is imposed on a new resident of this state who brings into this state a motor vehicle that has been registered previously in the new resident's name in any other state or foreign country.

(b) The tax is \$15 for each vehicle.

(c) The tax imposed by this section is in lieu of the tax imposed by Section 152.022 of this code.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.024. Tax on an Even Exchange of Motor Vehicles**

(a) A tax is imposed on each party to a transaction involving the even exchange of two motor vehicles.

(b) The tax on each party is \$5.

(c) No transfer of title in an even exchange shall be accomplished until the taxes have been paid.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.025. Tax on Gift of Motor Vehicle**

(a) A tax is imposed on the recipient of a gift of a motor vehicle.

(b) The tax is \$10.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.026. Tax on Gross Rental Receipts**

(a) A tax is imposed on the gross rental receipts from the rental of a rented motor vehicle.

(b) The tax rate is four percent of the gross rental receipts.

(c) Except for a destroyed motor vehicle or an unrecovered stolen motor vehicle, the total amount of gross rental receipts tax paid by the owner, as defined by Section 152.001(9)(A) of this code, on a motor vehicle registered under Section 152.061 of this code may not be less than an amount equal to the tax that would be imposed by Section 152.021 or 152.022 of this code but for Subsection (d) of this section.

(d) The taxes imposed by Sections 152.021 and 152.022 of this code are not due on a motor vehicle as long as it is registered as a rental vehicle under Section 152.061 of this code.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.027. Tax on Metal Dealer Plates**

(a) A use tax is imposed on each person to whom is issued a metal dealer's plate authorized by Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

(b) The tax is \$20 for each plate issued.

(c) The tax imposed by this section is in lieu of any other tax imposed by this chapter.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.028. Use Tax on Motor Vehicle Brought Back Into State**

(a) A use tax is imposed on the operator of a motor vehicle that was purchased tax-free under Section 152.090 of this code and that is brought back into this state for use on the public highways of this state. The tax is imposed at the time the motor vehicle is brought back into this state.

(b) The tax rate is four percent of the total consideration.

[Acts 1983, 68th Leg., p. 722, ch. 167, § 2, eff. May 20, 1983.]

[Sections 152.029 to 152.040 reserved for expansion]

**SUBCHAPTER C. COLLECTION OF TAXES**

**§ 152.041. General Collection Procedure**

(a) The tax assessor-collector of the county in which an application for registration or for a Texas

certificate of title is made shall collect taxes imposed by this chapter unless another person is required by this chapter to collect the taxes.

(b) The tax assessor-collector may not accept an application unless the tax and any penalty is paid.

(c) The tax imposed by Section 152.021 of this code is due on the 20th working day after the day that the motor vehicle is delivered to the purchaser.

(d) The tax imposed by Section 152.022 of this code is due on the 20th working day after the day that the motor vehicle is brought into this state.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 455, ch. 93, § 11, eff. Sept. 1, 1983.]

#### § 152.042. Collection of Tax on Metal Dealer Plates

A person required to pay the tax imposed by Section 152.027 of this code shall pay the tax to the State Department of Highways and Public Transportation, and the department may not issue the metal dealer's plates until the tax is paid.

[Acts 1981, 67th Leg., p. 1589, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.043. Collection of Tax on Motor Vehicles Operated by Non-residents

A person doing business in this state who registers a motor vehicle under Section 14, Chapter 110, Acts of the 47th Legislature, Regular Session, 1941 (Article 6675a-16, Vernon's Texas Civil Statutes), shall pay the tax imposed by Section 152.022 of this code to the comptroller on or before the day the motor vehicle is brought into Texas.

[Acts 1981, 67th Leg., p. 1590, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.044. Payment by Seller

If the comptroller on an audit of the records of a seller finds that the amount of tax due was incorrectly reported on a joint affidavit and that the amount of tax paid was less than the amount due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the vehicle, the seller is liable for the amount of the tax determined to be due.

[Acts 1981, 67th Leg., p. 1590, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.045. Collection of Tax on Gross Rental Receipts

(a) An owner of a motor vehicle subject to the tax on gross rental receipts shall report and pay the tax to the comptroller in the same manner as the Limited Sales, Excise and Use Tax is reported and paid by retailers under Chapter 151 of this code.

(b) The owner shall add the tax to the rental charge, and when added, the tax is:

- (1) a part of the rental charge;

(2) a debt owed to the motor vehicle owner by the person renting the vehicle; and

(3) recoverable at law in the same manner as the rental charge.

(c) The comptroller may proceed against a person renting a motor vehicle for any unpaid gross rental receipts tax.

[Acts 1981, 67th Leg., p. 1590, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.046. Change in Tax Status of Motor Vehicle

(a) If the owner, as defined by Section 152.001(9)(A) of this code, of a motor vehicle registered as a rental vehicle ceases to use the vehicle for rental, the owner shall report and remit on the next report required to be filed with the comptroller by Section 152.045(a) of this code any unpaid portion of gross rental receipts tax imposed by Section 152.026 of this code.

(b) An owner of a motor vehicle on which the motor vehicle sales or use tax has been paid who subsequently uses the vehicle for rental shall collect the gross rental receipts tax imposed by this chapter from the person renting the vehicle. The owner may credit an amount equal to the motor vehicle sales or use tax paid by the owner to the comptroller against the amount of gross rental receipts due. This credit is not transferable and cannot be applied against tax due and payable from the rental of another vehicle belonging to the same owner.

(c) For the purpose of determining the amount of minimum tax due under Section 152.026(c) of this code only, an owner of a motor vehicle on which the tax on gross rental receipts is imposed may credit against the amount of gross rental receipts due an amount equal to the tax on gross rental receipts the owner has paid to any other state. This credit is not transferable and cannot be applied against tax due and payable from the rental of another vehicle belonging to the same owner.

[Acts 1981, 67th Leg., p. 1590, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 152.047 to 152.060 reserved for expansion]

#### SUBCHAPTER D. TAX ENFORCEMENT PROCEDURES

#### § 152.061. Registration of Motor Vehicle Purchased For Rental

(a) An owner of a motor vehicle purchased for rental may furnish the county tax assessor-collector a rental certificate in lieu of the motor vehicle sales or use tax imposed by Sections 152.021 and 152.022 of this code. The county tax assessor-collector shall accept the motor vehicle for registration and issue a receipt for the license and title application.

(b) A rental certificate may be furnished by:

(1) a dealer licensed under Article 6686, Revised Civil Statutes of Texas, 1925, as amended; or

(2) the owner if the vehicle is for use in a rental business that rents at least five different motor vehicles within any 12-month period.

(c) The rental certificate shall be in a form designated by the comptroller and must contain:

(1) the name, address, and signature of the owner;

(2) the owner's or dealer's license number or a statement by the owner that the rental business of the owner meets the activity requirements of Subsection (b) of this section;

(3) the motor vehicle identification number; and

(4) the amount of total consideration for the motor vehicle and the amount of tax that would be due if the rental certificate had not been furnished.

[Acts 1981, 67th Leg., p. 1591, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.062. Required Affidavits**

(a) The persons obligated by this chapter to pay taxes on the transaction shall file a joint affidavit with the tax assessor-collector of the county in which the application for registration and for a Texas certificate of title is made.

(b) The affidavit must be in the following form:

(1) if a motor vehicle is sold, the seller and purchaser shall make a joint affidavit stating the then value in dollars of the total consideration for the vehicle; or

(2) if the ownership of a motor vehicle is transferred as the result of a gift or even exchange, the principal parties shall make a joint affidavit stating the nature of the transaction.

(c) If a party to a sale, even exchange, or gift is a corporation, the president, vice-president, secretary, manager, or other authorized officer of the corporation shall make the affidavit for the corporation.

(d) The tax assessor-collector shall keep a copy of each affidavit until it is called for by the comptroller for auditing.

[Acts 1981, 67th Leg., p. 1591, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.063. Records**

(a) The seller of a motor vehicle shall keep at his principal office for at least four years from the date of the sale a complete record of each retail sale of a motor vehicle. The record must include a copy of the invoice of each vehicle sold. The invoice copy must show the full price of the motor vehicle and the itemized price of all its accessories. All sales and supporting records of a seller are open to inspection and audit by the comptroller.

(b) The owner of a motor vehicle used for rental purposes shall keep for four years after purchase of

a motor vehicle records and supporting documents containing the following information on the amount of:

(1) total consideration for the motor vehicle;

(2) motor vehicle sales or use tax paid on the motor vehicle;

(3) gross rental receipts received from the rental of the motor vehicle; and

(4) gross rental receipts tax paid to the comptroller on each motor vehicle used for rental purposes by the owner.

(c) No mileage records are required.

[Acts 1981, 67th Leg., p. 1591, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.064. Tax Receipts**

(a) The comptroller shall prescribe the form of a tax receipt to be issued to a person paying a tax imposed by this chapter.

(b) The tax assessor-collector of each county shall:

(1) issue a receipt to the person paying a tax imposed by this chapter;

(2) send a copy of the receipt to the comptroller according to the instructions of the comptroller; and

(3) retain one copy of the receipt as a permanent record of the transaction.

[Acts 1981, 67th Leg., p. 1592, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1361, ch. 281, § 2, eff. Sept. 1, 1983.]

**§ 152.065. Registration as a Retailer; Permit**

A motor vehicle owner required to collect, report, and pay a tax on gross rental receipts imposed by this chapter shall register as a retailer with the comptroller in the same manner as is required of a retailer under Subchapter F of Chapter 151 of this code.<sup>1</sup> The owner shall also obtain from the comptroller a motor vehicle retailer's permit.

[Acts 1981, 67th Leg., p. 1592, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 151.201 et seq.

**§ 152.066. Deficiency Determination; Penalty and Interest**

(a) The comptroller shall give written notice to the seller of a motor vehicle of a deficiency determination made under Section 152.044 of this code.

(b) A person who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax within 30 days after the day on which the tax is due, the person forfeits an additional five percent.

(c) The minimum penalty imposed by this section is \$1.

(d) Except in the case of the gross receipts tax, interest begins to accrue on delinquent taxes 60

days after the day on which the joint affidavit was executed. Delinquent taxes on gross rental receipts draw interest beginning 60 days from the due date.

[Acts 1981, 67th Leg., p. 1592, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 455, ch. 93, § 12, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

#### § 152.067. Petition for Redetermination of a Deficiency

(a) The comptroller shall:

(1) promulgate rules under which the seller may petition for a redetermination of deficiency; and

(2) grant an oral hearing to any seller who requests a hearing.

(b) The comptroller may increase or decrease the determination of deficiency before it becomes final, but the amount may be increased only if the comptroller asserts a claim for the increase at or before the oral hearing.

(c) If the comptroller asserts a claim for an increase in the determination, the seller is entitled to a 30-day continuance of the hearing in order to obtain other evidence relating to the items on which the increase is based.

[Acts 1981, 67th Leg., p. 1592, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.068. Revocation of Motor Vehicle Retail Seller's Permit

(a) The comptroller may revoke or suspend any one or more of the motor vehicle retailer's permits held by a person if that person fails to comply with a provision of this chapter or with a rule of the comptroller relating to a tax imposed by this chapter.

(b) Before revoking or suspending the permit, the comptroller must provide the permit holder with a hearing. The permit holder must be given at least 20 days' notice specifying the time and place of hearing and requiring that the permit holder show cause why the permit or permits should not be revoked or suspended.

(c) The comptroller shall give the person notice of the suspension or revocation of any permit.

(d) Notice required by this section must be written and may be served either personally or by mail.

(e) The comptroller may not issue a new permit after the revocation of a permit unless satisfied that the former permit holder will comply with the provi-

sions of this chapter and the rules of the comptroller. The comptroller may prescribe the terms under which a suspended permit may be reissued.

(f) The permit holder or person whose permit is revoked may appeal the comptroller's action in the same manner as a final deficiency determination may be appealed.

[Acts 1981, 67th Leg., p. 1593, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 152.069 to 152.080 reserved for expansion]

### SUBCHAPTER E. EXEMPTIONS

#### § 152.081. Driver Training Motor Vehicles

The taxes imposed by this chapter do not apply to the sale or use of a motor vehicle that is:

(1) owned by a motor vehicle dealer as defined by Article 6686(a), Revised Civil Statutes of Texas, 1925, as amended;

(2) purchased in this state; and

(3) loaned free of charge by the dealer to a public school for use in an approved standard driver training course.

[Acts 1981, 67th Leg., p. 1593, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.082. Sale of Motor Vehicle to or Use of Motor Vehicle by Public Agency

The taxes imposed by this chapter do not apply to the sale of a motor vehicle to or use of a motor vehicle by a public agency if the motor vehicle is operated with an exempt license plate issued under Section 3-AA, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-3aa, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 1593, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 152.083. Lease of Motor Vehicle to Public Agency

(a) The taxes imposed by this chapter do not apply to the purchase of a motor vehicle that is to be leased to a public agency.

(b) This exemption applies only if the person purchasing the motor vehicle to be leased presents the tax assessor-collector a form prescribed and provided by the comptroller and showing:

(1) the identification of the motor vehicle;

(2) the name and address of the lessor and the lessee; and

(3) verification by an officer of the public agency to which the motor vehicle will be leased that the agency will operate the vehicle with an exempt license plate issued under Section 3-AA, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-3aa, Vernon's Texas Civil Statutes).



(c) If a motor vehicle for which the tax has not been paid ceases to be leased to a public agency, the owner shall notify the comptroller on a form provided by the comptroller and shall pay the sales or use tax on the motor vehicle based on the owner's book value of the motor vehicle. The tax is imposed at the same rate that is provided by Section 152.021(b) of this code.

[Acts 1981, 67th Leg., p. 1593, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.084. Rental of Motor Vehicle to Public Agency**

The taxes imposed by this chapter do not apply to the rental of a motor vehicle to a public agency. The tax which would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts tax imposed by Section 152.026 of this code.

[Acts 1981, 67th Leg., p. 1594, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.085. Rental of Motor Vehicle for Purposes of Re-Rental**

(a) The taxes imposed by this chapter on the gross rental receipts from the rental of a motor vehicle do not apply to the rental of a motor vehicle for the purpose of re-rental.

(b) The minimum gross rental receipts tax imposed by Section 152.026 of this code remains the obligation of the owner as defined by Section 152.001(9)(A) of this code. The owner may credit all gross rental receipts taxes paid to the comptroller on the re-rental of a motor vehicle registered under Section 152.061 of this code for the purpose of calculating the amount of minimum gross rental receipts tax due.

(c) A person authorized by Section 152.061 of this code to register motor vehicles for rental may issue an exemption certificate to the owner of the motor vehicle. An owner who takes the certificate in good faith is relieved of the burden of proving that the motor vehicle was rented for purposes of re-rental.

[Acts 1981, 67th Leg., p. 1594, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.086. Motor Vehicles Driven by Handicapped Persons**

(a) The taxes imposed by this chapter do not apply to the sale or use of a motor vehicle that:

(1) has been or will be modified for operation by, or for the transportation of, an orthopedically handicapped person; and

(2) is driven by or used for the transportation of an orthopedically handicapped person.

(b) The comptroller shall promulgate rules to ensure that motor vehicles exempted from taxation by this section are used primarily by orthopedically handicapped persons. The comptroller may require any individual seeking exemption under this section

to present information establishing qualification for the exemption.

(c) If the comptroller finds that the motor vehicle is not used primarily for the purposes specified in this Act or that the exemption should not have been granted, the comptroller shall assess the tax in an amount that would have been due had the exemption not been given under this section.

[Acts 1981, 67th Leg., p. 1594, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2758, ch. 752, § 5(b), eff. Jan. 1, 1982.]

**§ 152.087. Fire Trucks and Ambulances**

The taxes imposed by this chapter do not apply to the purchase, rental, or use of a fire truck, ambulance, or other motor vehicle used exclusively for fire-fighting purposes or for emergency medical services when purchased by a volunteer fire department.

[Acts 1981, 67th Leg., p. 1594, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.088. Motor Vehicles Used for Religious Purposes**

The taxes imposed by this chapter do not apply to the sale or use of or the receipts from the rental of a motor vehicle that is used for religious purposes.

[Acts 1981, 67th Leg., p. 1595, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.089. Vehicles Taxed by Other Law**

The taxes imposed by this chapter do not apply to motor vehicles, trailers, and semitrailers taxed under Chapter 157 of this code, and the taxes imposed by Chapter 157 of this code do not apply to motor vehicles taxed under this chapter; provided that if a motor vehicle, trailer, or semitrailer taxed under Chapter 157 of this code ceases to be used as an interstate motor vehicle, trailer, or semitrailer within one year of either the date the vehicle was purchased in Texas or the date the vehicle was first brought into Texas, the taxes imposed by this chapter will apply at that time.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1(b), eff. Jan. 1, 1982.]

Acts 1981, 67th Leg., p. 633, ch. 254, § 1, eff. Jan. 1, 1982, which added § (6) to Taxation-General, art. 6.09, and which was repealed by Acts 1981, 67th Leg., p. 2786, ch. 752, § 17, eff. Jan. 1, 1982, was incorporated into the Tax Code by the addition of this section. Acts 1981, 67th Leg., p. 637, ch. 254, § 3, provides:

"(a) Since Chapter 6, Title 122A, failed to establish adequate administrative provisions and failed to define "use" in regard to interstate commerce, the use tax provisions in Chapter 6 will not apply to interstate motor vehicles as defined in this Act and which were purchased or first brought into the state prior to the effective date of this Act or to contracts executed prior to the effective date of this Act. The clarifying amendments of this Act shall apply to interstate motor vehicles purchased or first brought into the state or contracts executed after the effective date of this Act.

"(b) This Act becomes effective January 1, 1982."

**§ 152.090. Motor Vehicles Transported Out of State**

*Text as added by Acts 1983, 68th Leg., p. 722, ch. 167, § 1*

The taxes imposed by this chapter do not apply to the retail sale of a motor vehicle that is transported out of state, prior to any use in this state other than the transportation of the vehicle out of state, for use exclusively outside this state.

[Acts 1983, 68th Leg., p. 722, ch. 167, § 1, eff. May 20, 1983.]

*For text as added by Acts 1983, 68th Leg., p. 4787, ch. 841, § 3, see § 152.090, post*

**§ 152.090. Motor Vehicles Used In Enterprise Zone**

*Text as added by Acts 1983, 68th Leg., p. 4789, ch. 841, § 3*

(a) The taxes imposed by this chapter do not apply to the sale or rental of a motor vehicle to, or the use of a motor vehicle by, a qualified business, as defined by the Texas Enterprise Zone Act,<sup>1</sup> if the vehicle is used predominantly in a state-federal enterprise zone.

(b) The exemption applies to a sale, rental, or use of a motor vehicle occurring on or after the first day of the state fiscal year that begins after the designation of the state-federal enterprise zone.

(c) This section takes effect on the first day of the state fiscal year following the date on which the governor certifies that a federal enterprise zone law has been enacted.

[Added by Acts 1983, 68th Leg., p. 4789, ch. 841, § 3.]

<sup>1</sup> Civil Statutes, art. 5190.7.

*For text as added by Acts 1983, 68th Leg., p. 722, ch. 167, § 1, see § 152.090, ante*

**§ 152.091. Farm Use**

(a) The taxes imposed by this chapter do not apply to the sale or use of a farm machine, trailer, or semitrailer for use primarily for farming and ranching, including the rearing of poultry, and use in feedlots.

(b)(1) The taxes imposed by this chapter do not apply to the purchase of a farm machine, trailer, or semitrailer that is to be leased for use primarily for farming and ranching, including the rearing of poultry, and use in feedlots.

(2) The exemption provided by this subsection applies only if the person purchasing the farm machine, trailer, or semitrailer to be leased presents the tax assessor-collector a form prescribed and provided by the comptroller showing:

- (A) the identification of the motor vehicle;
- (B) the name and address of the lessor and the lessee; and

(C) verification by the lessee that the farm machine, trailer, or semitrailer will be used primarily for farming and ranching, including the rearing of poultry and use in feedlots.

(3) If a motor vehicle for which the tax has not been paid ceases to be leased for use primarily for farming and ranching, including the rearing of poultry, and use in feedlots, the owner shall notify the comptroller on a form provided by the comptroller and shall pay the sales or use tax on the motor vehicle based on the owner's book value of the motor vehicle. The tax is imposed at the same percentage rate that is provided by Subsection (b) of Section 152.021 of this code.

(c) The taxes imposed by this chapter do not apply to the rental of a farm machine, a trailer, or a semitrailer for use primarily for farming and ranching, including the rearing of poultry, and use in feedlots. The tax that would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts imposed by Section 152.026 of this code. The exemption provided by this subsection applies only if the owner of the motor vehicle obtains in good faith an exemption certificate from the person to whom the vehicle is being rented.

[Acts 1983, 68th Leg., p. 3211, ch. 553, § 3, eff. Sept. 1, 1983.]

[Sections 152.092 to 152.100 reserved for expansion]

**SUBCHAPTER F. PENALTIES**

**§ 152.101. Penalty for Signing False Affidavit**

(a) A person commits an offense if the person signs a joint affidavit required by Section 152.062 of this code and knows that it is false in any material fact.

(b) An offense under this section is a felony punishable by imprisonment for not less than two nor more than five years or a fine of not more than \$1,000, or both.

[Acts 1981, 67th Leg., p. 1595, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 152.102. Operation Without Payment of Tax**

(a) A person commits an offense if the person knowingly operates a motor vehicle on a highway of this state without paying the tax imposed by this chapter on the vehicle.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$10 nor more than \$500 or confinement in the county jail for not less than one day nor more than 30 days, or both.

[Acts 1981, 67th Leg., p. 1595, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 152.103. Failure to Keep Records

(a) A seller commits an offense if he fails to make and retain complete records for the period of four years as provided by Section 152.063(a) of this code.

(b) An offense under this section is a misdemeanor or punishable by a fine of not less than \$25 nor more than \$500.

[Acts 1981, 67th Leg., p. 1595, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 152.104 to 152.120 reserved for expansion]

SUBCHAPTER G. DISPOSITION OF TAXES

§ 152.121. Amount of Tax Sent to Comptroller; Frequency of Remittance

(a) The county tax assessor-collector shall send 95 percent of the money collected from taxes and penalties imposed by this chapter to the comptroller, and shall retain five percent of the taxes and penalties collected under this chapter as fees of office or to be paid into the officers' salary fund of the county as provided by general law.

(b) The state portion of the taxes collected under this chapter by a county tax assessor-collector shall be sent to the comptroller as follows:

(1) on the 10th day of each month if during the last preceding state fiscal year less than \$2 million of the taxes imposed by this chapter was collected by the office of the county tax assessor-collector;

(2) once each week if during the last preceding state fiscal year \$2 million or more, but less than \$10 million, of the taxes imposed by this chapter was collected by the office of the county tax assessor-collector; or

(3) daily (as collected) if during the last preceding state fiscal year \$10 million or more of the taxes imposed by this chapter was collected by the office of the county tax assessor-collector.

(c) Taxes on metal dealer plates collected by the State Department of Highways and Public Transportation shall be deposited by the department in the state treasury in the same manner as are other taxes collected under this chapter.

[Acts 1981, 67th Leg., p. 1595, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 456, ch. 93, § 13, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1360, ch. 280, § 1, eff. Sept. 1, 1983.]

§ 152.122. Allocation of Tax

The comptroller shall deposit one-fourth of the funds received under Section 152.121 of this code to the credit of the available school fund and the remaining three-fourths to the credit of the general revenue fund.

[Acts 1981, 67th Leg., p. 1595, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

CHAPTER 153. MOTOR FUEL TAXES

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## SUBCHAPTER A. GENERAL PROVISIONS

## § 153.001. Definitions

In this chapter:

- (1) "Aviation fuel dealer" means a person who:  
 (A) is the operator of an aircraft servicing facility;  
 (B) delivers gasoline or diesel fuel exclusively into the fuel supply tanks of aircraft or into equipment used solely for servicing aircraft and used exclusively off-highway; and  
 (C) does not use, sell, or distribute gasoline or diesel fuel on which a fuel tax is required to be collected or paid to this state.  
 (2) "Cargo tank" means an assembly that is used for transporting, hauling, or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, automobile, truck, trailer, or wheels, and includes accessory piping, valves, and meters, but does not include a fuel supply tank connected to the carburetor or fuel injector of a motor vehicle.

(3) "Dealer" means a person who is the operator of a service station or other retail outlet and who delivers motor fuel into the fuel supply tanks of motor vehicles or motorboats.

(4) "Diesel fuel" means kerosene or another liquid suitable for the propulsion of diesel-powered motor vehicles, but does not include gasoline or liquefied gas.

(5) "Diesel bulk delivery" means a delivery of a quantity of diesel fuel in excess of five gallons, but does not include a delivery into the fuel supply tanks of a motor vehicle.

(6) "Diesel tax prepaid user" means a person:

(A) whose purchases of diesel fuel are predominantly for nonhighway use;

(B) whose only diesel-powered motor vehicles are passenger cars or light trucks; and

(C) who elects to prepay an annual diesel fuel tax to the comptroller on each diesel-powered motor vehicle.

(7) "Diesel user" means a person who delivers, or causes to be delivered, diesel fuel into the fuel supply tanks of motor vehicles owned or operated by him.

(8) "Distributor" means a person who:

(A) regularly makes sales or distributions of gasoline that are not into the fuel supply tanks of motor vehicles, motorboats, or aircraft;

(B) refines, distills, manufactures, produces, or blends for sale or distribution tax-free gasoline in this state;

(C) imports or exports tax-free gasoline other than in the fuel supply tanks of motor vehicles; or

(D) in any other manner acquires or possesses tax-free gasoline.

(9) "Gasoline" means a liquid offered for sale, sold or used as the fuel for a gasoline-powered engine, but does not include diesel fuel or liquefied gas.

(10) "Gasoline or diesel bulk user" means a person who purchases tax-paid gasoline or diesel fuel in quantities of 2,500 or more gallons at each delivery into storage facilities maintained by him primarily for delivery of the gasoline or diesel fuel into fuel supply tanks of motor vehicles or motorboats owned or operated by him.

(11) "Interstate trucker" means a person who imports motor fuel in the fuel supply tanks of a motor vehicle having an aggregate fuel tank capacity of 42 or more gallons, operated for commercial purposes, for taxable use on the public highways of this state, but who does not sell or distribute motor fuel to other persons within this state, except as provided in Subchapter D of this chapter.<sup>1</sup>

(12) "Lessor" means a person:

(A) whose principal business is the leasing or renting of motor vehicles for compensation to the general public;

(B) who maintains established places of business; and

(C) whose lease or rental contracts require the motor vehicles to be returned to the established places of business at the termination of the lease.

(13) "Light truck" means a pickup truck, panel delivery truck, carryall truck, or other motor vehicle that is designed, used, or maintained primarily for the transportation of property and that has a manufacturer's rated carrying capacity not exceeding 2,000 pounds.

(14) "Liquefied gas" means all combustible gases that exist in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, but does not include gasoline or diesel fuel.

(15) "Liquefied gas tax decal user" means a person who owns or operates on the public highways of this state a motor vehicle:

(A) equipped with a liquefied gas carburetion system;

(B) required to be licensed by the State Department of Highways and Public Transportation; and

(C) required to have a Texas certificate of inspection.

(16) "Motorboat" means a vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(17) "Motor fuel" includes gasoline, diesel fuel, liquefied gas, and other products that are usable as propellants of a motor vehicle.

(18) "Motor vehicle" means a self-propelled vehicle licensed for highway use or used on the highway.

(19) "Passenger car" means a motor vehicle designed for carrying 10 or fewer passengers and used for the transportation of persons.

(20) "Public highway" means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

(21) "Registered gross weight" or "RGW" means the total weight of the vehicle and carrying capacity shown on the registration certificate issued by the State Department of Highways and Public Transportation.

(22) "Sale" means a transfer of title, exchange, or barter of motor fuel, but does not include transfer of possession of motor fuel on consignment.

(23) "Supplier" means a person who:

(A) refines, distills, manufactures, produces, or blends for sale or distribution diesel fuel in this state;

(B) imports or exports diesel fuel other than in the fuel supply tanks of motor vehicles;

(C) sells or delivers diesel fuel in bulk quantities to dealers, users, aviation fuel dealers, or other suppliers; or

(D) is engaged in the business of selling or delivering diesel fuel in bulk quantities to consumers for nonhighway uses.

(24) "Transit company" means a business that:

(A) transports in a political subdivision persons in carriers designed for 12 or more passengers;

(B) holds a franchise from a political subdivision; and

(C) has its rates regulated by the subdivision or is owned or operated by the political subdivision.

(25) "Wholesaler" or "jobber" means a person who purchases tax-paid gasoline for resale or distribution at wholesale.

[Acts 1981, 67th Leg., p. 1598, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 153.301 et seq.

#### § 153.002. Tax Liability on Leased Vehicles

(a) A user or interstate trucker is liable for the tax on motor fuel imported into this state in fuel supply tanks of motor vehicles leased to him and used on the Texas highways to the same extent and in the same manner as motor fuel imported in his own motor vehicles and used on the public highways of Texas, unless the lessor is liable under Subsection (b) of this section.

(b) A lessor who is engaged regularly in the business of leasing for compensation motor vehicles and equipment he owns to carriers or other lessees for interstate operation may be deemed to be the user or interstate trucker when he supplies or pays for the motor fuel consumed in those vehicles, and the lessor may be issued a permit as an interstate trucker when an application and bond have been properly filed with and approved by the comptroller.

(c) A lessee may exclude motor vehicles that he leases from his reports and liabilities under this chapter, but only if the motor vehicles in question have been leased from a lessor holding a valid permit as a bonded interstate trucker for the calendar year.

(d) A lessor described in Subsection (b) of this section must file with his application for an interstate trucker permit one copy of the form-lease or service contract he enters into with the various lessees of his motor vehicles. When the interstate trucker permit has been secured, the lessor shall make and assign to each motor vehicle he leases for interstate operation a photocopy of the permit to be carried in the cab compartment of the motor vehicle. The photocopy of the permit must have typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. The lessor is responsible for the proper use of the photocopy of the permit issued

and for its return to him with the motor vehicle to which it is assigned.

[Acts 1981, 67th Leg., p. 1600, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.003. Carrier Records

(a) All common and contract carriers operating in this state shall keep for four years, open to inspection by the comptroller, a complete and separate record of each intrastate and interstate transportation of motor fuel.

(b) The record must show:

- (1) the date of transportation;
- (2) the name of the consignor and consignee;
- (3) the means of transportation; and
- (4) the quantity and kind of motor fuel transported.

(c) The record must also include:

- (1) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and
- (2) the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of motor fuel which has been diverted.

[Acts 1981, 67th Leg., p. 1600, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.004. Motor Fuel Transportation: Required Documents

(a) Except as provided by Subsection (c) of this section, a person who transports motor fuel, regardless of whether or not a tax is due on the motor fuel under this chapter, shall record the shipment of the cargo on a cargo manifest containing such information as may be required by the comptroller.

(b) The cargo manifest shall be carried with the motor fuel until the motor fuel is resold or removed from the cargo tank.

(c) This section does not apply to a pipeline operating as a common carrier or to the transporting of motor fuel in the fuel supply tanks of motor vehicles. A cargo manifest is not required for any motor fuel being transported by a person in his own cargo tanks for his own use and not for resale.

[Acts 1981, 67th Leg., p. 1601, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.005. Redetermination of Tax Liability

(a) A person against whom a determination for any tax, penalty, or interest is made under this chapter may petition for a redetermination within 30 days after service of the notice of the determination.

(b) If a petition for redetermination is filed within the 30-day period, the comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral

hearing and shall give him 20 days' notice of the time and place of the hearing. The notice may be served personally or by mail. If the notice is served by mail, it shall be addressed to the permittee at his address as it appears in the records of the comptroller.

(c) In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(d) An order or decision of the comptroller on a petition for redetermination becomes final 30 days after service on the petitioner of notice of the order or decision.

[Acts 1981, 67th Leg., p. 1601, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.006. Cancellation or Refusal of Permit

(a) The comptroller may cancel or refuse to issue or reissue a motor fuel permit to any person who has violated or has failed to comply with a provision of this chapter or a rule of the comptroller.

(b) Before a permit may be canceled, or the issuance or reissuance refused, the comptroller shall give the permittee or permit applicant not less than 10 days' notice of a hearing at the office of the comptroller, in Austin, Texas, or at a specified comptroller's field office, granting the permittee or applicant an opportunity to show cause before the comptroller why the proposed action should not be taken. If a permit is in effect, the permit remains in force pending the determination of the show-cause hearing. Notice must be in writing and may be mailed by United States registered mail or certified mail to the permittee or applicant at his last known address, or may be delivered by the comptroller to the permittee or applicant, and no other notice is necessary. In case of service by mail of a notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(c) The comptroller may prescribe rules of procedure and evidence for the hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If, after the hearing or the opportunity to be heard, the permit is canceled or the issuance or reissuance refused by the comptroller, all taxes that have been collected or that have accrued, although the taxes are not then due and payable to the state, except by the provisions of this chapter, shall become due and payable concurrently with the notice of cancellation of the permit. The permittee shall within five days make a report covering the period of time not covered by preceding reports filed by the permittee and ending with the date of cancellation, and shall remit and pay to the comptroller all taxes that have been collected and that have ac-

crued from the sale, use, or distribution of motor fuel in this state.

[Acts 1981, 67th Leg., p. 1601, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.007. Enforcement of Permit Cancellation or Refusal**

(a) The comptroller may examine any books and records incident to the conduct of the business of a person whose permit has been canceled on the person's failure to file the reports required by this chapter or to remit all taxes due. The comptroller shall issue an audit deficiency determination of the amount of delinquent taxes, penalties, and interest, containing a demand for payment. The deficiency determination shall provide that if neither a payment is made nor a request for a redetermination is filed within 30 days after the date of the notice of the deficiency, the amount of the determination becomes due and payable. If the amount is not paid on or before the 44th day after service of the notice of the deficiency determination, the bond or other security required under this chapter shall be forfeited. The demand for payment shall be addressed to both the surety or sureties and the person who owes the delinquency.

(b) If the forfeiture of the bond or other security does not satisfy the delinquency, the comptroller shall certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against the person or his surety or both to collect the amount due. After being given notice of an order of cancellation, it shall be unlawful for any person to continue to operate his business under a canceled permit. The attorney general may file suit to enjoin the person from continuing to operate under his permit until the person's permit is reissued by the comptroller.

(c) An appeal from an order of the comptroller canceling or refusing the issuance or reissuance of a permit may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits, except that:

- (1) an appeal must be perfected and filed within 30 days after the effective date of the order, decision, or ruling of the comptroller;
- (2) the trial of the case shall begin within 10 days after its filing; and
- (3) the order, decision, or ruling of the comptroller may be suspended or modified by the court pending a trial on the merits.

[Acts 1981, 67th Leg., p. 1602, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1043, ch. 235, art. 7, § 5(a), eff. Sept. 1, 1983.]

**§ 153.008. Inspection of Premises and Records**

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, the comptroller may:

- (1) inspect any premises where motor fuel; crude petroleum; natural gas; derivatives or condensates of crude petroleum, natural gas, or their products; methyl alcohol; ethyl alcohol; or other blending agents are produced, made, prepared, stored, transported, sold, or offered for sale or exchange;
- (2) examine the books and records required to be kept and records incident to the business of any distributor, supplier, dealer, or any person receiving or possessing, delivering, or selling motor fuel, crude oil, derivatives or condensates of crude petroleum, natural gas, or their products, or any blending agents;
- (3) examine and either gauge or measure the contents of all storage tanks, containers, and other property or equipment; and
- (4) take samples of any and all of these products stored on the premises.

[Acts 1981, 67th Leg., p. 1603, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.009. Calibration of Cargo Tanks and Containers**

(a) Before initially transporting gasoline or diesel fuel for sale or distribution, a person shall have the cargo tanks or other containers used for transporting gasoline or diesel fuel tested, measured, and calibrated by the comptroller, an authorized representative of another state, or a commercial calibration company that meets the calibration standards approved by the comptroller. The person shall obtain a measurement certificate showing the capacity by liquid volume for each cargo tank or container and its compartments before transporting gasoline or diesel fuel.

(b) The owner of a cargo tank or container tested and measured by the comptroller may be required to pay to the state a reasonable fee for the water used to calibrate tank capacity.

(c) The measurement certificate or a duplicate measurement certificate shall be carried with the vehicle for which it was issued. The certificate number and the total capacities of each cargo tank must be marked on the rear of the vehicle. Compartment capacities must be marked on each compartment dome.

(d) Cargo tanks or containers that have been damaged, repaired, or modified in any way that might affect their capacity must be retested or remeasured before transporting gasoline or diesel fuel. The comptroller shall mark "out of order" on a cargo tank that is not in conformity with this section or with a rule promulgated under this section.

[Acts 1981, 67th Leg., p. 1603, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.010. Authority to Stop and Examine**

In order to enforce the provisions of this chapter, the comptroller or a peace officer may stop a motor vehicle that appears to be operating with or transporting motor fuel in order to examine the cargo manifest or invoices required to be carried, examine a permit or copy of a permit that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a distributor, supplier, dealer, user, or any person required to be so permitted.

[Acts 1981, 67th Leg., p. 1603, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.011. Impoundment and Seizure**

(a) If after examination or other investigation, it is found that the owner or operator of any motor vehicle or cargo tanks has not paid all motor fuel taxes due, or does not possess a valid permit as a distributor, supplier, user, dealer, or interstate trucker to use or transport motor fuel in motor vehicles operating on the public highways, the comptroller or peace officer may impound the motor vehicle or cargo tanks. Unless proof is produced within 72 hours after the beginning of impoundment that the owner or operator has paid the taxes and has paid all other taxes established by audit or investigation by the comptroller to be due on the motor fuel used or transported, or that the owner or operator holds a valid permit to use or transport motor fuel for such purposes, the motor vehicle or cargo tanks and cargo may be held until all taxes, penalties, and interest found to be due this state and all costs of impoundment have been paid, or until the owner or operator has filed a bond with the comptroller payable to the treasurer in an amount equal to twice the amount of taxes, penalties, interest, and costs found to be due, to guarantee the payment of such liabilities to the state.

(b) If the owner or operator does not produce the required permit, pay the taxes, penalties, and interest due, or post the bond required, the comptroller may seize the impounded property.

(c) The comptroller may seize:

(1) all motor fuel on which taxes are imposed by this chapter that is found in the possession, custody, or control of any person for the purpose of being sold, transported, removed, or used by him in violation of this chapter;

(2) all motor fuel that is removed or is deposited, stored, or concealed in any place with intent to avoid payment of taxes;

(3) any automobile, truck, tank truck, boat, conveyance, or other vehicle used in the removal or transportation of the motor fuel to avoid payment of taxes; and

(4) all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for avoiding the payment of taxes and found in

the place, building, or vehicle where the motor fuel is found.

(d) The comptroller, when making a seizure under this section, shall immediately make a written report showing the name of the agent or representative making the seizure, the place where or the person from whom the property was seized, an inventory of the property, and an appraisal at the usual and ordinary retail price of each article seized. The report shall be prepared in duplicate and signed by the agent or representative making the seizure. The original report shall be given to the person from whom the property is taken, and the duplicate shall be filed in the office of the comptroller and be open to public inspection.

[Acts 1981, 67th Leg., p. 1604, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.012. Sale of Seized Property**

(a) The comptroller may sell property seized under Section 153.011 of this code.

(b) Notice of the time and place of a sale shall be given to the delinquent person in writing by certified mail at least 20 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the person at his last known address or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 14 days before the date set for the sale. The notice must contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or as much of it as may be necessary, will be sold at public auction in accordance with the law and the notice.

(c) At the sale, the comptroller shall sell the property and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(d) The proceeds of a sale shall be allocated according to the following priorities:

(1) the payment of expenses of seizure, appraisal, custody, advertising, auction, and any other expenses incident to the seizure and sale;

(2) the payment of the tax, penalty, and interest; and

(3) the repayment of the remaining balance to the person liable for the amount unless a claim is



presented before the sale by any other person who has an ownership interest evidenced by a financing statement or lien, in which case the comptroller shall withhold the remaining balance pending a determination of the rights of the respective parties.

[Acts 1981, 67th Leg., p. 1604, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.013. Presumptions**

(a) A distributor, supplier, dealer, interstate trucker, or user who fails to keep a record, issue an invoice, or file a report required by this chapter, is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the distributor, supplier, dealer, interstate trucker, or user. Motor fuel unaccounted for is presumed to have been sold or used for taxable purposes. The comptroller may fix or establish the amount of taxes, penalties, and interest due the state from the records of deliveries or from any records or information available to him. If a tax claim, as developed from this procedure, is not paid, after the opportunity to request a redetermination, the claim and any audit made by the comptroller or any report filed by the distributor, supplier, dealer, interstate trucker, or user, are evidence in any suit or judicial proceedings filed by the attorney general, and are prima facie evidence of the correctness of the claim or audit. A prima facie presumption of the correctness of the claim may be overcome at the trial by evidence adduced by the distributor, supplier, dealer, interstate trucker, or user.

(b) In the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles traveled. An interstate trucker may produce evidence of motor fuel consumption to establish another mileage factor. If an examination or audit made by the comptroller from the records of an interstate trucker shows that a greater amount of motor fuel was consumed than was reported by the interstate trucker for tax purposes, the interstate trucker is liable for the tax, penalties, and interest on the additional amount shown or he is entitled to a credit or refund on overpayments of tax established by the audit.

[Acts 1981, 67th Leg., p. 1605, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.014. Venue of Tax Collection Suits**

The venue of a suit, injunction, or other proceeding at law available for the establishment or collection of a claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter is in Travis County or in any other county having venue under existing venue statutes.

[Acts 1981, 67th Leg., p. 1606, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.015. Other Motor Fuel Taxes Prohibited**

The taxes imposed by this chapter are in lieu of any other excise or occupation tax imposed by a political subdivision of the state on the sale, use, or distribution of gasoline, diesel fuel, or liquefied gas.

[Acts 1981, 67th Leg., p. 1606, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 153.016 to 153.100 reserved for expansion]

**SUBCHAPTER B. GASOLINE TAX**

**§ 153.101. Gasoline Tax Imposed**

A tax is imposed on the first sale or use of gasoline in this state.

[Acts 1981, 67th Leg., p. 1606, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.102. Tax Rates**

(a) The gasoline tax rate is five cents for each gross or volumetric gallon or fractional part sold or used in this state except as provided by Subsection (b) of this section.

(b) The gasoline tax rate for gasoline sold to a transit company for exclusive use in its transit carrier vehicles under an exemption certificate promulgated by the comptroller is four cents for each gallon.

[Acts 1981, 67th Leg., p. 1606, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.103. Computation of Tax**

(a) The amount of the tax shall be computed and paid over to the state on the temperature-adjusted volume of gallons of taxable gasoline sold to wholesalers, jobbers, dealers, or other persons purchasing gasoline for resale, where such sales are made in single deliveries of 5,000 gallons or more, or in lesser quantities where required by city ordinance, as computed from the authorized measurement certificate issued for the cargo tank making deliveries. The comptroller may publish and distribute a table to be used for converting the measurement of gross gallons of gasoline to temperature-adjusted gallons of gasoline.

(b) The amount of the tax shall be computed and paid to the state on the gross or volumetric gallons of taxable gasoline sold where the sales are made in single deliveries of less than 5,000 gallons or in quantities less than the maximum prescribed by city ordinance, if the maximum is less than 5,000 gallons.

(c) For a distributor whose gasoline deliveries are made to retail outlets that are operated by him or deliveries by him on consignment, the tax on sales to users and consumers shall be computed on the basis of actual sales.

(d) If the comptroller is not satisfied with a tax return or the amount of tax required to be paid to

the state by any distributor who elects to report on the basis of actual sales, the comptroller may compute and determine the amount required to be paid on the basis of the beginning inventory, showing the total gallons of gasoline in storage at the location on the first day of the calendar month, plus the total gallons of gasoline delivered into the storage facility during the month, less the total gallons of gasoline in the storage facility at the end of the calendar month.

[Acts 1981, 67th Leg., p. 1606, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2774, ch. 752, § 8(b), eff. Jan. 1, 1982.]

#### § 153.104. Exceptions

The tax imposed by this subchapter does not apply to gasoline:

(1) brought into this state in the fuel tank of a vehicle with a capacity of less than 42 gallons when the tank is connected to the carburetor or fuel injection system of the power plant providing the propulsion of the vehicle;

(2) delivered by a permitted distributor to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or a barge for export from this state if the gasoline is moved forthwith outside the state;

(3) sold by a permitted distributor to another permitted distributor;

(4) sold to the federal government for its exclusive use;

(5) delivered by a permitted distributor into a storage facility of a permitted aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment; or

(6) sold by one aviation fuel dealer to another aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment.

[Acts 1981, 67th Leg., p. 1607, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.105. Collection of Tax; Allowances

(a) A person who makes a sale or use of gasoline on which the tax has not been previously paid in this state for any purpose other than those excepted by Section 153.104 of this code shall at the time of sale or use collect the tax from the purchaser or recipient of gasoline in addition to the selling price and is also liable to the state for the taxes collected at the time and in the manner as provided by this chapter. A person is liable to the state for the tax at the applicable tax rate for each gallon of gasoline or fractional part thereof used or consumed by him in a taxable manner and shall report and pay the tax as provided by this chapter. In each subsequent sale of gasoline on which the tax has been collected, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the gasoline for the purpose of

propelling a vehicle upon the public highways of this state.

(b) Gasoline is deemed to be used when it is delivered into a fuel supply tank.

(c) If gasoline is purchased, in a single delivery of 5,000 gallons or more, or in lesser quantities where required by city ordinance, by any person for the purpose of resale, the seller, distributor, or broker shall sell the product to the retailer or any other person purchasing the product on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit and the tax shall be computed and paid over to the state on the temperature-corrected basis. All other sales shall be reported to the comptroller on the basis of gross or volumetric gallons of taxable gasoline sold.

(d) For each one degree Fahrenheit that the temperature of gasoline taken at the time of loading for sale differs from 60 degrees Fahrenheit, an adjustment in the contract price shall be made equal to the stipulated value of six-hundredths of one percent of the total volume delivered.

(e) The tax on two percent of the taxable gallons of gasoline sold in this state shall be allocated to the distributor making the first taxable sale or use of the gasoline and paying the tax to the state for the expenses of collecting, accounting for, reporting, and remitting the tax collected and for keeping records.

[Acts 1981, 67th Leg., p. 1607, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2774, ch. 752, § 8(c), eff. Jan. 1, 1982.]

#### § 153.106. Permits: Application

(a) A distributor, interstate trucker, or aviation fuel dealer shall file an application with the comptroller for one of the nonassignable permits provided for in this subchapter.

(b) The comptroller shall promulgate the application form, which must contain the following information:

(1) the name under which the applicant transacts or intends to transact business;

(2) the principal office, residence, or place of business in Texas of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(4) other information required by the comptroller.

[Acts 1981, 67th Leg., p. 1608, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.107. Distributor's Permit

A person performing the functions of a distributor shall obtain a distributor's permit.

[Acts 1981, 67th Leg., p. 1608, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.108. Interstate Trucker's Permit**

An interstate trucker's permit authorizes a person who imports gasoline into Texas in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 or more gallons to report and pay the tax due on the gasoline imported into this state or to claim a credit or refund of the tax paid on gasoline purchased in Texas and used in other states.

[Acts 1981, 67th Leg., p. 1608, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.109. Trip Permits**

(a) In lieu of an annual interstate trucker's permit, a person bringing a motor vehicle into this state for commercial purposes with fuel supply tanks having an aggregate capacity of 42 or more gallons may obtain a trip permit. The trip permit must be obtained prior to entry into state or at the time of entry.

(b) No more than five trip permits for each person may be issued during a calendar year.

(c) A fee for each trip permit shall be collected from the applicant and shall be an amount equivalent to the tax payable on the quantity of gasoline that could be imported in the fuel supply tanks of the motor vehicle, but not less than \$5.

(d) No reports are required with respect to the vehicle.

(e) Operating a motor vehicle without a valid interstate trucker's or trip permit may subject the operator to a penalty under Section 153.402 of this code.

[Acts 1981, 67th Leg., p. 1608, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.110. Aviation Fuel Dealer's Permit**

A person who delivers gasoline exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment shall obtain an aviation fuel dealer's permit. A person who obtains an aviation fuel dealer's permit may sell aviation fuel to another aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. The holder of an aviation fuel dealer's permit may not act as a distributor of gasoline other than as provided by this section.

[Acts 1981, 67th Leg., p. 1609, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.111. Distributor May Perform Other Functions**

A distributor may operate under the distributor's permit as an interstate trucker or an aviation fuel dealer without securing a separate permit, but is subject to all other conditions, requirements, and liabilities imposed on those permittees.

[Acts 1981, 67th Leg., p. 1609, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.112. Permits: Periods of Validity**

(a) A distributor's permit is permanent and is valid so long as the permittee has in force and effect the required bond or security and furnishes timely reports as required, or until the permit is surrendered by the holder or canceled by the comptroller.

(b) An aviation fuel dealer's permit is permanent and is valid until the permit is surrendered by the holder or canceled by the comptroller.

(c) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calendar year or until the permit is surrendered by the holder or canceled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee furnishes timely reports as required.

(d) A trip permit is valid for the period stated on it as determined by the comptroller.

[Acts 1981, 67th Leg., p. 1609, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 448, ch. 92, § 2, eff. May 10, 1983.]

**§ 153.113. Display of Permit**

(a) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which gasoline is sold, distributed, or used, and in each motor vehicle used by the permit holder to transport gasoline purchased by him for resale, distribution, or use.

(b) A person holding an interstate trucker's permit shall reproduce the permit and carry a photocopy with each motor vehicle being operated into or from the state.

[Acts 1981, 67th Leg., p. 1609, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.114. List of Distributors and Aviation Fuel Dealers**

The comptroller, on or before December 20 of each year, shall mail or distribute to all permitted distributors a printed alphabetical list of permitted distributors and aviation fuel dealers who are qualified to purchase gasoline tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to the distributors each month. A current and effective permit or the list furnished by the comptroller is evidence of the validity of the permit until the comptroller notifies distributors of a change in the status of a permit holder.

[Acts 1981, 67th Leg., p. 1610, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.115. Tax Payments by an Interstate Truck-er; Allowance**

(a) An interstate trucker who imports gasoline into Texas in the fuel supply tanks of motor vehi-

cles having an aggregate capacity of 42 or more gallons for each vehicle shall report and pay the tax at the imposed rate on gasoline that is imported and used on Texas highways. The number of gallons of gasoline used on Texas highways shall be computed by dividing the total miles traveled in all states by the total number of gallons of gasoline delivered into the fuel supply tanks of motor vehicles in all states. The mileage factor obtained shall be divided into the total Texas miles traveled in order to determine the number of gallons of gasoline used in Texas.

(b) An interstate trucker shall remit all taxes due by him based on the applicable tax rate for each gallon on gasoline consumed within the state at the time of the filing of his quarterly reports.

(c) A permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of gasoline on payment of the taxes to the state for the expense of recordkeeping, reporting, and remitting the tax.

[Acts 1981, 67th Leg., p. 1610, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.116. Bonds and Other Security for Taxes

(a) A distributor shall post a surety bond equal to two times the highest tax that could accrue on tax-free gasoline purchased or acquired during a reporting period. The minimum bond is \$1,000. The maximum bond is \$100,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event he may require one or more bonds or securities in a total amount exceeding \$100,000.

(b) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(c) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury; or

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in Texas that is a member of the FDIC or the FSLIC in an amount at least equal to the bond amount required.

(d) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(e) No surety bond or other form of security may be released until it is determined by examination or audit that no tax, penalty, or interest liability exists. The cash or securities shall be released within 60 days after the comptroller determines that no liability exists.

(f) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due this state by a person in whose behalf the cash or certificate security was deposited.

(g) A surety on a bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. The comptroller, promptly on receipt of the request, shall notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of the state, or other authorized security, in the amount required in this section, the comptroller shall cancel the permit in the manner provided by this chapter.

(h) A permittee may request an examination or audit to obtain release of the security when he relinquishes the permit or when he desires to substitute one form of security for an existing one.

[Acts 1981, 67th Leg., p. 1610, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 444, ch. 92, § 1, eff. May 10, 1983.]

Section 4 of the 1983 amendatory act provides:

"A bond or other security of an interstate trucker permitted under Chapter 153, Tax Code, and on file with the comptroller of public accounts on the effective date of this Act is not affected by this Act and continues in force and effect until discharged by the comptroller as provided by Section 153.116 or 153.218, Tax Code, as amended."

#### § 153.117. Records

(a) A distributor shall keep a record showing the number of gallons of:

(1) all gasoline inventories on hand at the first of each month;

(2) all gasoline refined, compounded, or blended;

(3) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;

(4) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(5) all gasoline lost by fire or other accident.

(b) A dealer shall keep a record showing the number of gallons of:

(1) gasoline inventories on hand at the first of each month;

(2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

- (3) all gasoline sold or used, showing the date of the sale or use; and
- (4) all gasoline lost by fire or other accident.
- (c) An interstate trucker shall keep a record of:
  - (1) the total miles traveled in all states by all vehicles traveling into or from Texas and the total quantity of gasoline consumed in those vehicles; and
  - (2) the total miles traveled in Texas and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in Texas.
- (d) An aviation fuel dealer shall keep a record showing the number of gallons of:
  - (1) all gasoline inventories on hand at the first of each month;
  - (2) all gasoline purchased or received, showing the name of the seller and date of each purchase or receipt;
  - (3) all gasoline sold or used in aircraft or aircraft servicing equipment; and
  - (4) all gasoline lost by fire or other accident.
- (e) The records of an aviation fuel dealer made under Subsection (d)(3) of this section must show:
  - (1) the name of the purchaser or user of gasoline;
  - (2) the date of the sale or use of gasoline; and
  - (3) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline is used.
- (f) The comptroller may require selective schedules from a distributor, dealer, aviation fuel dealer, interstate trucker, or common or contract carrier for any purchases, sales, or deliveries of gasoline when the schedules are not inconsistent with the requirements of this chapter.
- (g) The records required must be kept for four years and are open to inspection at all times by the comptroller and the attorney general.

[Acts 1981, 67th Leg., p. 1611, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.118. Reports and Payments**

(a) On or before the 25th day of each month, a distributor shall file a report and remit the amount of tax required to be collected during the preceding month. The report shall be executed by the distributor or his representative and shall be filed with the comptroller on a form provided or approved by the comptroller, containing complete and detailed information not inconsistent with the requirements of this chapter of gasoline transactions. A distributor required to file a report under this section who has not sold or used any gasoline during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of a distributor to obtain forms from the comptroller is no excuse for the failure to file a report

containing all the information required to be reported.

(b) On or before the 25th day of the month following the end of each calendar quarter, an interstate trucker shall file a report and remit the amount of tax due. The report shall be properly executed and filed with the comptroller and must contain complete and detailed information as the comptroller may require on forms provided for that purpose. An interstate trucker who has not used any gasoline during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of an interstate trucker to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(c) An interstate trucker who maintains all fuel records in Texas and all or substantially all of whose highway use is made with gasoline purchased within this state with the tax paid may be exempted from the quarterly reporting requirements under an annual affidavit to the comptroller attesting to the intrastate, or substantial intrastate, tax-paid purchases of gasoline.

(d) An aviation fuel dealer is not required to file a report with the comptroller.

(e) On or before August 15th of each odd-numbered calendar year each person required to pay a tax under this section must remit a reasonable estimate of the tax liability for gasoline which was required to be collected during the preceding month. A reasonable estimate must be at least an amount equal to the tax due on July 25th for gasoline tax owing in June.

[Acts 1981, 67th Leg., p. 1612, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1377, ch. 284, § 5, eff. Sept. 1, 1983.]

**§ 153.119. Refunds of Taxes Paid on Excepted Uses of Gasoline**

(a) A person who exports, sells to the federal government, loses by fire or other accident, or uses gasoline for the purpose of operating or propelling a motorboat, tractor used for agricultural purposes, or stationary engine, or for another purpose except in a vehicle operated or intended to be operated on the public highways of this state, and who has paid the tax imposed on gasoline by this chapter either directly or indirectly is, when the person has complied with the invoice and filing provisions of this section and the rules of the comptroller, entitled to reimbursement of the tax paid by him, less a filing fee and any amount allowed distributors, wholesalers or jobbers, dealers, or others under Section 153.105(c) of this code.

(b) A person may file a refund claim for tax paid on the gasoline used in motor vehicles that are operated exclusively off the public highways except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in incidental travel.

(c) A permitted interstate trucker is entitled to a credit equivalent to the tax rate for each gallon paid on all gasoline on which the gasoline tax has been paid and later consumed in vehicles outside the state. If the amount of credit to which the interstate trucker is entitled for any calendar quarter exceeds the amount of tax for which the interstate trucker is liable for gasoline consumed in the vehicles during the reporting period, the excess shall be allowed as a credit or refund on a timely filed quarterly report against tax for which the interstate trucker would be otherwise liable for any of the three succeeding quarters. Evidence of the mileage traveled and gallonage consumed and the payment of the gasoline tax on a form as may be required by or is satisfactory to the comptroller shall be furnished by an interstate trucker claiming a credit or tax refund.

(d) If the quantity of gasoline used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or methods designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund.

(e) A person who exports or loses by fire or other accident 100 or more gallons of gasoline on which the tax has been paid, or sells gasoline in any quantity to the United States government for the exclusive use of that government on which the tax has been paid, may file a claim for a refund of the net tax paid to the state in the manner provided by this chapter or as the comptroller may direct. A permitted distributor who establishes proof satisfactory to the comptroller of export, loss by accident, or sale to the United States, may take a credit for the net amount of the tax paid to the state on any subsequent monthly report and tax payment made to the comptroller within one year after the date of the exportation, loss, or sale.

(f) The right to receive a refund under this section is not assignable, except that a person residing or maintaining a place of business outside the state who purchases 100 or more gallons of gasoline and forthwith exports the entire quantity may assign his right to claim a refund to the permitted distributor from whom the gasoline was purchased or to any permitted distributor who has paid the tax on the gasoline either directly or through another permitted distributor in Texas. If a distributor secures an assignment and the proof of export required by the comptroller, he may credit the tax paid on any monthly report filed with the comptroller within one year after the first day of the month following the date of delivery of the gasoline to the exporter.

[Acts 1981, 67th Leg., p. 1613, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.120. Claims for Refunds

(a) A refund claim must be filed on form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

- (1) the stamped or preprinted name and address of the seller;
- (2) the name of the purchaser;
- (3) the date of delivery of the gasoline;
- (4) the date of the issuance of the invoice (if different from the date of fuel delivery);
- (5) the number of gallons of gasoline delivered;
- (6) the amount of tax, either separately stated from the selling price or a notation that the selling price includes the tax; and
- (7) the type of vehicle or equipment, such as a motorboat, railway engine, highway vehicle, off-highway vehicle, or refrigeration unit or stationary engine into which the fuel is delivered.

(b) The invoice shall be made out in duplicate. The original invoice shall be delivered to the purchaser of the gasoline no later than 30 days after the date of delivery of the gasoline. The duplicate invoice shall be retained by the seller at his place of business. If the delivery of gasoline is made through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases made during a 30-day billing cycle.

(c) A person who files a claim for a tax refund on gasoline used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits his right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

[Acts 1981, 67th Leg., p. 1614, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.121. When Gasoline Tax Refund May be Filed

(a) Except as provided by this section, a claim for a refund must be filed with the comptroller within one year after the first day of the calendar month following the purchase, use, delivery, export, or loss by fire or other accident of gasoline, whichever period expires latest.

(b) An interstate trucker may accumulate credits for four successive calendar quarters, but he must take the credit or claim a refund on a report filed on or before the 25th day following the fourth quarter.

(c) If an audit of a distributor determines that tax-free sales were made to an unauthorized purchaser and the purchaser could have filed for a refund if the tax had been paid at the time of the sale, the unauthorized purchaser must file a refund

claim within one year after the date of the final assessment.

[Acts 1981, 67th Leg., p. 1614, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.122. Gasoline Tax Refund Payment and Filing Fee**

(a) After examination of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund:

(1) the two percent deducted originally by the distributor on the first sale or distribution of the gasoline; and

(2) \$1.50 as a filing fee.

(b) The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of this section. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law.

[Acts 1981, 67th Leg., p. 1614, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.123. Gasoline and Alcohol Mixtures: Special Fund and Tax Credits and Payments**

(a) For a gasoline and alcohol mixture which meets the requirements of Subsection (e) of this section and except as provided in Subsection (b), a credit may be claimed by a distributor, pursuant to Subsection (d) of this section, in the following amounts:

(1) until January 1, 1987, five cents per gallon on the first sale or use of that mixture;

(2) from January 1, 1987, through December 31, 1987, four cents per gallon on the first sale or use of that mixture;

(3) from January 1, 1988, through December 31, 1988, three cents per gallon on the first sale or use of that mixture;

(4) from January 1, 1989, through December 31, 1989, two cents per gallon on the first sale or use of that mixture;

(5) from January 1, 1990, through December 31, 1990, one cent per gallon on the first sale or use of that mixture; and

(6) on and after January 1, 1991, no credit may be claimed.

(b)(1) On or before the 30th day preceding each calendar quarter, the comptroller shall estimate (based on the most recent data available) the total volume, in gallons, of first sales or uses of gasoline and alcohol mixture meeting the requirements of Subsection (e) of this section, and the total amount of credits which will be allowed to distributors under Subsection (d), both for the next calendar quarter. If the total amount of that estimated credit exceeds \$2,712,500, the comptroller shall estimate and publish in the Texas Register a credit per gallon (rounded to the nearest one-tenth cent) of mixture which, if applied to first sales or uses of gasoline

and alcohol mixture containing alcohol produced from renewable sources produced outside the state, would limit the total of the credits allowed to \$2,712,500 for the next calendar quarter. Such estimated amount shall be the maximum amount of the credit which may be claimed for the next calendar quarter for first sales or uses of gasoline and alcohol mixture containing alcohol produced from renewable sources produced outside the state.

(2) If the total amount of the estimated credit resulting from first sales or uses of gasoline and alcohol mixtures containing alcohol from renewable sources produced in the state only exceeds \$2,712,500 for the next calendar quarter, then no credit may be claimed for such mixtures containing alcohol produced from renewable sources from outside the state, and the comptroller shall estimate and publish in the Texas Register a credit per gallon (rounded to the nearest one-tenth cent) of mixture which, if applied to first sales or uses of such mixtures containing alcohol produced from renewable sources produced in the state, would limit the total of the credits allowed to \$2,712,500 for the next calendar quarter. Such estimated amount shall be the maximum of the credit which may be claimed for the next calendar quarter for first sales or uses of gasoline and alcohol mixture produced from renewable sources from within the state.

(3) In arriving at estimates of credits per gallon of mixture which will limit total credits to \$2,712,500 per calendar quarter, the comptroller shall consider actual total credits during the second preceding calendar quarter and shall, if necessary, include an adjustment in the estimate for the next calendar quarter to account for the difference between actual total credits during the second preceding calendar quarter and \$2,712,500.

(4) Except as provided in this subdivision, no mixture that contains alcohol that was produced or distilled in another state is eligible for a credit on its first sale or use in the state. If the comptroller certifies that another state provides an exemption from that state's taxes applicable to gasoline or a credit or refund for taxes collected or an amount in lieu of taxes collected on a mixture of gasoline and alcohol, and if the other state's exemption, credit, or refund allowance applies to a mixture that includes alcohol produced or distilled in Texas, and if the alcohol produced in the other state meets the specifications provided by Subdivisions (1), (2), and (3) of Subsection (e) of this section, then the specifications for the mixture for which the transfers shall be made to the gasoline and alcohol mixture fund and for which credits or payments shall be made shall include mixtures that include alcohol produced and distilled in the other state or in Texas and the other state. However, if a mixture of alcohol produced or distilled in another state and gasoline qualifies under this subsection for a transfer and a credit, the amount of the transfer and credit under this section for the mixture may not exceed

the amount of the exemption, credit, or refund (stated in or converted to cents for each gallon of the mixture) provided by the state in which the alcohol was produced or distilled.

(5) The provisions of Section 153.123, Tax Code, are not severable. If any portion of Section 153.123, Tax Code, is held to be unlawful or unconstitutional, the entire section shall have no force and effect.

(c) A distributor required by this subchapter to make and keep records of motor fuel sales, distributions, uses, or consumptions and who is required to make reports to the comptroller shall include separately in the records and reports, in the detail as the comptroller may prescribe, the sale, distribution, use, or consumption of the gasoline and alcohol mixture defined in Subsection (e) of this section. The records and reports shall include the amount of all alcohol manufactured or purchased as a motor fuel blending agent.

(d) A distributor may claim a credit on the first sale or use of the gasoline and alcohol mixture described in Subsection (e) of this section or on the gasoline used for mixing with ethyl alcohol if the mixture meets the specifications described in Subsection (e) of this section, in the amount per gallon specified in Subsections (a) and (b) of this section. The distributor may take the credit on his monthly Texas gasoline distribution report. The comptroller shall, on or before the 25th day of each month, transfer the total amount of credits allowed the previous month from the general revenue fund to the gasoline and alcohol mixture fund, which is hereby created, and thereafter shall promptly transfer funds from the gasoline and alcohol mixture fund to the highway motor fuel tax fund in the amount of the credits allowed to distributors. If a claim is based on gasoline used for mixing with ethyl alcohol, the comptroller may require the person making the claim to include in the claim the total number of gallons of ethyl alcohol produced or purchased and not thereafter resold or distributed as ethyl alcohol and any other information deemed necessary. The forms to be used, the procedure for filing, and the time within which a claim for credit must be instituted are the same as those set forth for claims for refund of taxes provided in Sections 153.120 and 153.121 of this code, with any modifications that the comptroller determines to be appropriate to accomplish the purposes of this section.

(e) the mixture of gasoline and alcohol for which transfers, credits, or payments shall be made under this section shall meet the following specifications:

- (1) the mixture must contain at least 10 percent ethyl alcohol;
- (2) the alcohol added to the gasoline must have been at least 192 proof when added; and
- (3) the alcohol added to the gasoline must have been produced or distilled from a renewable source only.

[Acts 1981, 67th Leg., 1st C.S., p. 43, ch. 3, § 2, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1425, ch. 287, § 1, eff. June 9, 1983.]

Section 1 of the 1981 Act adding this section provides:

"The Legislature of the State of Texas finds that:

"(1) it is in the public interest of the people of Texas to conserve its mineral resources;

"(2) the encouragement of the use of a gasoline and alcohol mixture meeting the specifications of this Act is in furtherance of the public interest; and

"(3) the public interest of this state will be served by creating the gasoline and alcohol mixture fund, transferring money to that fund, and providing for credits or payments in accordance with this Act."

Section 2 of the 1983 amendatory act provides:

"The comptroller shall make the initial estimates required by Section 153.123(b), Tax Code, by July 1, 1983, to be effective with credit claims filed during and after September 1, 1983. During the portion of the calendar quarter of the initial effectiveness of this Act, the credits per gallon shall be estimated such that total credits are expected to be \$904,167 per month. Beginning with the last calendar quarter of 1983, all estimates shall be made on a calendar quarter basis, as required by Section 153.123(b), Tax Code."

[Sections 153.124 to 153.200 reserved for expansion]

#### SUBCHAPTER C. DIESEL FUEL TAX

##### § 153.201. Diesel Fuel Tax Imposed

A tax is imposed on the first sale or use of diesel fuel in this state.

[Acts 1981, 67th Leg., p. 1615, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 153.202. Tax Rates

(a) The diesel fuel tax rate is 6.5 cents for each gross or volumetric gallon or fractional part sold or used in this state except as provided by Subsection (b) of this section.

(b) The diesel fuel tax rate for diesel fuel sold by a permitted supplier to a transit company for exclusive use in its transit vehicles under an exemption certificate issued by the comptroller is six cents for each gallon.

[Acts 1981, 67th Leg., p. 1615, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 153.203. Exceptions

The tax imposed by this subchapter does not apply to:

- (1) diesel fuel delivered by a permitted supplier to a common or contract carrier, oceangoing vessel (including ship, tanker, or boat), or barge for export from this state, if the diesel fuel is moved forthwith outside this state;
- (2) diesel fuel sold by a permitted supplier to the federal government for its exclusive use;
- (3) diesel fuel sold or delivered by a permitted supplier to another permitted supplier or bonded user, to the bulk storage facility of a diesel tax prepaid user, or to a purchaser who provides a signed statement as provided by Section 153.205 of this code, but not including a delivery of tax-free diesel fuel into the fuel supply tanks of a motor vehicle, except for a motor vehicle owned by the federal government;



(4) diesel fuel sold or delivered by a permitted supplier into the storage facility of a permitted aviation fuel dealer, from which diesel fuel will be sold or delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment;

(5) diesel fuel sold or delivered by a permitted supplier into fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(6) kerosene when delivered by a permitted supplier into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use; or

(7) diesel fuel sold or delivered by one aviation fuel dealer to another aviation fuel dealer who will deliver the diesel fuel exclusively into the supply tanks of aircraft or aircraft servicing equipment.

[Acts 1981, 67th Leg., p. 1615, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.204. **Computation of Tax**

(a) The amount of the tax shall be computed and paid to the state on the temperature-adjusted volume of gallons of taxable diesel fuel sold to wholesalers, jobbers, dealers, or other persons purchasing diesel fuel for resale, where such sales are made in single deliveries of 5,000 gallons or more, or in lesser quantities where required by city ordinance, as computed from the authorized measurement certificate issued for the cargo tank making deliveries. The comptroller may publish and distribute a table to be used for converting the measurement of gross gallons of diesel fuel to temperature-adjusted gallons of diesel fuel.

(b) The amount of the tax shall be computed and paid to the state on the gross or volumetric gallons of taxable diesel fuel sold where the sales are made in single deliveries of less than 5,000 gallons or in quantities less than the maximum prescribed by city ordinance, if the maximum is less than 5,000 gallons.

(c) For a supplier whose diesel fuel deliveries are made to retail outlets that are operated by him or deliveries by him on consignment, the tax on sales to users and consumers shall be computed on the basis of actual sales.

(d) If the comptroller is not satisfied with a tax return or the amount of tax required to be paid to the state by a supplier who elects to report on the basis of actual sales, the comptroller may compute and determine the amount required to be paid on the basis of the beginning inventory, showing the total gallons of diesel fuel in storage at the location on the first day of the calendar month, plus the total gallons of diesel fuel delivered into the storage facility during the month, and less the total gallons

of diesel fuel in the storage facility at the end of the calendar month.

[Acts 1981, 67th Leg., p. 1616, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2775, ch. 752, § 8(d), eff. Jan. 1, 1982.]

§ 153.205. **Statement for Purchase of Diesel Fuel Tax Free**

(a) The first sale or use of diesel fuel in this state is taxable, except that the sale of diesel fuel may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement that stipulates that:

(1) the purchaser does not operate any diesel-powered motor vehicles on the public highway;

(2) all of the diesel fuel will be consumed by the purchaser and no diesel fuel purchased on a signed statement will be resold; and

(3) none of the diesel fuel purchased in this state will be delivered or permitted by the purchaser to be delivered into fuel supply tanks of motor vehicles.

(b) The signed statement from the purchaser relieves the permitted supplier from the burden of proof that the sale of diesel fuel was not taxable to the purchaser and remains in effect unless:

(1) the statement is revoked in writing by the purchaser or supplier;

(2) the comptroller notifies the supplier in writing that the purchaser may no longer make tax-free purchases; or

(3) the supplier is put on notice by making taxable sales of diesel fuel to a purchaser who has previously submitted a signed statement to this supplier.

(c) A taxable sale to a person who has previously submitted a signed statement creates a rebuttable presumption that the supplier had reasonable notice that all subsequent sales should have been taxable.

(d) A taxable use of any part of the diesel fuel purchased under a signed statement shall, in addition to any criminal penalty, forfeit the right of the person to purchase diesel fuel tax free for a period of one year from the date of the offense, and any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the supplier, is a debt of the purchaser to the supplier until paid, and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any diesel fuel used for nonhighway purposes under Section 153.222 of this code.

(e) The statement must be signed by the purchaser or his representative.

(f) The comptroller's regulations may allow separate operating divisions of corporations to give separate signed statements as if they were different legal entities.

(g) The comptroller may promulgate necessary forms and rules to comply with this section.

[Acts 1981, 67th Leg., p. 1616, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.206. Collection and Payment of Tax; Allowances**

(a) A supplier who makes a sale or use of diesel fuel in this state for a purpose other than those exceptions listed in Section 153.203 of this code shall at the time of sale or use be liable to the state for the tax imposed in this subchapter and shall report and pay the tax in the manner provided in the subchapter.

(b) A dealer shall collect the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle and shall report and pay to the state any tax collected that has not been paid to a permitted supplier.

(c) A user, except a diesel tax prepaid user, shall report and pay to the state the tax at the rate imposed on each gallon of diesel fuel delivered by him into the fuel supply tanks of a motor vehicle, unless the tax has been paid to a permitted supplier or a dealer, or, as a diesel tax prepaid user, the tax has been prepaid directly to the comptroller.

(d) An interstate trucker who imports diesel fuel into Texas in the fuel supply tanks of a motor vehicle having an aggregate capacity of 42 or more gallons for each vehicle shall report and pay the tax at the rate imposed on diesel fuel that is imported and used on Texas highways. The number of gallons of diesel fuel used on Texas highways shall be computed by dividing the total miles traveled in all states by the total number of gallons of diesel fuel delivered into the fuel supply tanks of motor vehicles in all states. The mileage factor obtained shall be divided into the total Texas miles traveled in order to determine the number of gallons of diesel fuel used in Texas. An interstate trucker shall remit all taxes due by him based on the diesel fuel tax rate for each gallon on diesel fuel consumed within the state at the time of the filing of the quarterly report.

(e) Diesel fuel is deemed to be used when it is delivered into fuel supply tanks.

(f) If diesel fuel is purchased, in a single delivery of 5,000 gallons or more, or in lesser quantities where required by city ordinance, by any person for the purpose of resale, the seller, distributor, or broker shall sell the product to the retailer or any other person purchasing the product on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit and the tax shall be computed and paid over to the state on the temperature-corrected basis. All other sales shall be reported to the comptroller on the basis of gross or volumetric gallons of taxable gasoline sold.

(g) For each one degree Fahrenheit that the temperature of diesel fuel taken at the time of

loading for sale or consignment differs from 60 degrees Fahrenheit, an adjustment in the contract price shall be made equal to the stipulated value of four-hundredths of one percent of the total volume delivered.

(h) The tax on two percent of the taxable gallons of diesel fuel sold in this state shall be allocated to the supplier making the first taxable sale or use of the diesel fuel and paying the tax to the state for the expenses of collecting, accounting for, reporting, and remitting the tax collected and for keeping records.

(i) A bonded user or permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of diesel fuel on payment of the taxes to this state for the expense of recordkeeping, reporting, and remitting the tax.

[Acts 1981, 67th Leg., p. 1617, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2775, ch. 752, § 8(e), eff. Jan. 1, 1982.]

**§ 153.207. Permits; Application**

(a) A bonded supplier, bonded user, interstate trucker, diesel tax prepaid user, or aviation fuel dealer shall file an application with the comptroller for one of the nonassignable permits provided for in this subchapter.

(b) The comptroller shall promulgate the application form, which must contain the following information:

- (1) the name under which the applicant transacts or intends to transact business;
- (2) the principal office, residence, or place of business in Texas of the applicant;
- (3) if the applicant is not an individual, names of the principal officers of an applicant corporation, names of each partner in an applicant partnership, and the office, street, or post office address of each; and
- (4) other information required by the comptroller.

(c) The comptroller shall determine from the information shown in the application or other investigation the kind and class of permit to be issued.

[Acts 1981, 67th Leg., p. 1618, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.208. Bonded Supplier's Permit**

(a) A bonded supplier's permit authorizes a person to sell tax-free diesel fuel to:

- (1) another bonded supplier;
- (2) a bonded user;
- (3) an aviation fuel dealer;
- (4) a diesel prepaid user if delivered into his bulk storage facilities only; and
- (5) a person issuing a signed statement.

(b) A bonded supplier's permit authorizes a person to supply tax-paid diesel fuel to suppliers and other purchasers.

(c) A bonded supplier may not make a tax-free sale or delivery of diesel fuel into the fuel supply tanks of a motor vehicle other than a motor vehicle owned by the United States.

[Acts 1981, 67th Leg., p. 1618, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.209. **Bonded User Permit**

A bonded user permit authorizes a user whose purchases of diesel fuel are predominantly for non-highway use to purchase diesel fuel tax free from permitted suppliers and to report and pay taxes to this state on that part of the diesel fuel that is delivered into the fuel supply tanks of motor vehicles owned or operated by him.

[Acts 1981, 67th Leg., p. 1619, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.210. **Diesel Tax Prepaid User Permit**

(a) A diesel tax prepaid user permit authorizes a person whose use of diesel fuel is predominantly for nonhighway use, but who owns or operates one or more passenger cars or light trucks only in the weight class shown in this section to elect to prepay an annual tax on the fuel delivered from his own tax-free storage rather than obtain a bonded user permit. If he elects to obtain a diesel tax prepaid user permit, he must prepay the tax at the rate prescribed for each motor vehicle based on the class of registered gross weight. A person whose purchases of diesel fuel are predominantly for highway use does not qualify for a diesel tax prepaid user permit.

(b) The vehicle classes and amounts of tax are:

Class A	Less than 2,500 pounds	.....	\$20
Class B	2,500 to 3,500 pounds	.....	36
Class C	3,501 to 4,500 pounds	.....	45
Class D	4,501 to 7,000 pounds	.....	54

[Acts 1981, 67th Leg., p. 1619, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.211. **Interstate Trucker's Permit**

An interstate trucker's permit authorizes a person who imports diesel fuel into the state in the fuel supply tanks of motor vehicles having an aggregate capacity of 42 or more gallons for each vehicle to report and pay the tax due on diesel fuel imported into this state or to claim a credit or a refund of the tax paid on diesel fuel purchased in this state and then used in other states. An interstate trucker may not make tax-free purchases of diesel fuel.

[Acts 1981, 67th Leg., p. 1619, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.212. **Trip Permits**

(a) In lieu of an annual interstate trucker's permit, a person bringing motor vehicles into this state for commercial purposes with fuel supply tanks having an aggregate capacity of 42 or more gallons for each vehicle may obtain a trip permit.

(b) The trip permit must be obtained before entry into the state or at the time of entry. No more than five trip permits may be issued during a calendar year to a person operating interstate.

(c) A fee for each trip permit shall be collected from the applicant. The fee is an amount equal to the tax payable on the quantity of diesel fuel that could be imported in the fuel supply tanks of the motor vehicle, but not less than \$5.

[Acts 1981, 67th Leg., p. 1619, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.213. **Aviation Fuel Dealer's Permit**

An aviation fuel dealer's permit authorizes a person to deliver diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. The holder of an aviation fuel dealer's permit may sell or deliver diesel fuel to another aviation fuel dealer who will deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. The holder of an aviation fuel dealer's permit may not act as a supplier of diesel fuel other than as allowed by this section.

[Acts 1981, 67th Leg., p. 1619, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.214. **Supplier May Perform Other Functions**

A supplier may operate under the supplier's permit as a user, dealer, interstate trucker, or aviation fuel dealer without securing a separate permit, but is subject to all other conditions, requirements, and liabilities imposed on those permittees.

[Acts 1981, 67th Leg., p. 1620, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.215. **Permits: Periods of Validity**

(a) A bonded supplier's and bonded user permit is permanent and valid as long as the permittee has in force and effect the required bond or security and furnishes timely reports as required, or until the permit is surrendered by the holder or canceled by the comptroller.

(b) An aviation fuel dealer's permit is permanent and is valid until the permit is surrendered by the holder or canceled by the comptroller.

(c) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calendar year or until the permit is surrendered by the holder or canceled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee furnishes timely reports as required.

(d) A trip permit is valid for the period stated on it as determined by the comptroller.

(e) A diesel tax prepaid user permit is valid from the date of its initial issuance through the last day of the same month of the year following the year it was issued unless the motor vehicle for which the tax is prepaid is sold or no longer used on the public

highway. After its initial issuance, a diesel tax prepaid user permit shall be issued annually and is valid for one year from the date of its issuance unless the motor vehicle for which the tax is prepaid is sold or no longer used on the public highway. A diesel tax prepaid user must make application for a new permit each year.

[Acts 1981, 67th Leg., p. 1620, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 448, ch. 92, § 3, eff. May 10, 1983; Acts 1983, 68th Leg., p. 485, ch. 98, § 3, eff. Aug. 29, 1983.]

#### § 153.216. Display of Permit

(a) A permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which diesel fuel is sold, distributed, or used, and in each motor vehicle used by the permit holder to transport diesel fuel purchased by him for resale, distribution, or use.

(b) A person holding an interstate trucker's permit shall reproduce the permit and carry a photocopy with each motor vehicle being operated into or from the state.

[Acts 1981, 67th Leg., p. 1620, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.217. List of Suppliers, Bonded Users, and Aviation Fuel Dealers

(a) The comptroller, on or before December 20 of each calendar year, shall mail or distribute to each bonded supplier a printed alphabetical list of permitted suppliers, bonded users, and aviation fuel dealers who are qualified to purchase diesel fuel tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to each supplier each month.

(b) The comptroller, on or before January 31, of each calendar year, shall mail or distribute to each bonded supplier a printed alphabetical list of diesel tax prepaid user permittees who are qualified to purchase diesel fuel tax free during the ensuing calendar year. A supplemental list of additions and deletions shall be delivered to each supplier each month.

[Acts 1981, 67th Leg., p. 1620, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.218. Bonds and Other Security for Taxes

(a) A supplier or bonded user shall post a surety bond equal to two times the highest tax that will or may be expected to accrue on taxable sales and uses of diesel fuel during a reporting period. The minimum bond for a supplier is \$1,000. The minimum bond for a bonded user is \$500.

(b) A bond must be a continuing instrument, must constitute a new and separate obligation, in the penal sum named in the bond, for each calendar year or portion of a year while the bond is in force,

and must remain in effect until the surety on the bond is released and discharged.

(c) In lieu of filing a surety bond, an applicant for a permit may substitute the following security:

(1) cash in the form of U.S. currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury; or

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in the state that is a member of the FDIC or the FSLIC in an amount at least equal to the bond amount required.

(d) If the amount of an existing bond becomes insufficient, or a surety on a bond becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or an additional bond.

(e) No surety bond or other form of security may be released until it is determined by examination or audit that no tax, penalty, or interest liability exists. The cash or securities shall be released within 60 days after the comptroller determines that no liability exists.

(f) The comptroller may use the cash or certificate of deposit to satisfy a final determination of delinquent liability or a judgment secured in an action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due this state by a person in whose behalf the cash or securities were deposited.

(g) A surety on any bond furnished by a permittee shall be released and discharged from liability to the state accruing on the bond after the expiration of 30 days after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued or that accrues before the expiration of the 30-day period. The comptroller promptly on receipt of the request shall notify the permittee who furnished the bond, and unless the permittee, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of the state, or other authorized security, in the amount required in this section, the comptroller shall cancel the permit in the manner provided in this chapter.

(h) A permittee may request an examination or audit to obtain release of the security when he relinquishes the permit or when he desires to substitute one form of security for an existing one.

[Acts 1981, 67th Leg., p. 1621, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 444, ch. 92, § 1, eff. May 10, 1983.]

Section 4 of the 1983 amendatory act provides:

"A bond or other security of an interstate trucker permitted under Chapter 153, Tax Code, and on file with the comptroller of public accounts on the effective date of this Act is not affected by this Act and continues in force and effect until discharged by the comptroller as provided by Section 153.116 or 153.218, Tax Code, as amended."

§ 153.219. Records

(a) A supplier shall keep a record showing the number of gallons of:

- (1) all diesel fuel inventories on hand at the first of each month;
- (2) all diesel fuel refined, compounded, or blended;
- (3) all diesel fuel purchased or received, showing the name of the seller, and the date of each purchase or receipt;
- (4) all diesel fuel sold, distributed, or used showing the name of the purchaser and the date of sale, distribution, or use; and
- (5) all diesel fuel lost by fire or other accident.

(b) A dealer shall keep a record showing the number of gallons of:

- (1) all diesel fuel inventories on hand at the first of each month;
- (2) all diesel fuel purchased or received, showing the name of the seller, the date of each purchase or receipt;
- (3) all diesel fuel sold, distributed, or used; and
- (4) all diesel fuel lost by fire or other accident.

(c) A bonded user or other user with nonhighway equipment uses who files a claim for a refund shall keep a record showing the number of gallons of:

- (1) inventories of all diesel fuel on hand at the first of each month;
- (2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase;
- (3) all diesel fuel deliveries into the fuel supply tanks of motor vehicles;
- (4) diesel fuel used for other purposes, showing the purpose for which used; and
- (5) all diesel fuel lost by fire or other accident.

(d) An aviation fuel dealer shall keep a record showing the number of gallons of:

- (1) all diesel fuel inventories on hand at the first of each month;
- (2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
- (3) all diesel fuel sold, distributed, or used in aircraft or aircraft servicing equipment; and
- (4) diesel fuel lost by fire or other accident.

(e) The records of an aviation fuel dealer made under Subsection (d)(3) of this section must show:

- (1) the name of the purchaser or user of diesel fuel;
- (2) the date of the sale, distribution, or use of the diesel fuel; and
- (3) the registration or "N" number of the airplane or a description or number of the aircraft servicing equipment in which diesel fuel is used.

(f) A permitted interstate trucker shall keep a record of:

- (1) the total miles traveled in all states by all vehicles traveling into or from Texas and the total

quantity of diesel fuel consumed in those vehicles; and

- (2) the total miles traveled in Texas and the total quantity of diesel fuel delivered into the fuel supply tanks of motor vehicles in Texas.

(g) The comptroller may require selective schedules from a supplier, dealer, aviation fuel dealer, interstate trucker, or common or contract carrier for a purchase, sale, or delivery of diesel fuel if the schedules are not inconsistent with the requirements of this chapter.

(h) The records required must be kept for four years and are open to inspection at all times by the comptroller or the attorney general.

[Acts 1981, 67th Leg., p. 1622, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.220. Invoices

(a) A delivery of diesel fuel into the fuel supply tanks of a motor vehicle having an aggregate capacity of 42 or more gallons shall be evidenced by an invoice issued in duplicate by a dealer or an invoice or a distribution log issued by a bonded user or other user.

(b) An invoice must be carried in the vehicle until the next purchase or delivery of fuel into that vehicle. A distribution log must be carried with the vehicle until the end of the calendar month.

(c) A dealer shall also issue an invoice for a sale, distribution, or use for a purpose other than propelling a motor vehicle on the public highways of this state.

(d) The invoice or distribution log must contain:

- (1) the name and address of the person making the delivery stamped or preprinted on it;
- (2) a statement of the amount of the diesel fuel tax separate from the selling price or a statement that the diesel fuel tax is included in the selling price;
- (3) a statement that no diesel fuel tax was collected by the seller if the invoice is to be used by the seller to support a refund claim; and
- (4) spaces for providing the following:
  - (A) the name of the purchaser;
  - (B) the date of delivery of the fuel;
  - (C) the number of gallons delivered;
  - (D) the odometer or hubmeter reading;
  - (E) the state highway license or unit number;
  - (F) the type of vehicle or equipment, such as a motorboat, railway engine, highway vehicle, off-highway vehicle, or refrigeration unit or stationary engine into which the fuel is delivered; and
  - (G) the signature of the recipient.

(e) If the delivery of tax-paid diesel fuel is made through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of

billing covering multiple purchases made during a 30-day billing cycle.

(f) If the fuel delivery into the fuel supply tanks of a motor vehicle is through a method where there is no seller or agent present, then the purchaser or recipient must prepare the required invoice at the time of delivery.

[Acts 1981, 67th Leg., p. 1623, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.221. Reports and Payments

(a) On or before the 25th day of each month, a supplier shall file a report of diesel fuel transactions and remit the amount of tax required to be collected during the preceding month. A report must be filed on a form provided by the comptroller and contain information required by the comptroller, showing complete and detailed information of diesel fuel transactions during the preceding month. A supplier required to file a report under this section who has not sold, used, or distributed any diesel fuel during the reporting period shall file with the comptroller the report setting for the facts or information. The failure of a supplier to obtain forms from the comptroller is no excuse for the failure to file a report. The report must be executed by the supplier or his representative and is subject to the penalties provided in this chapter.

(b) On or before the 25th day of the month following the end of each calendar quarter, a bonded user or interstate trucker shall file a report and remit the amount of tax due except as provided by Subsection (d) of this section. A report must be executed and filed with the comptroller and contain complete and detailed information on diesel fuel transactions during the preceding calendar quarter and other information required by the comptroller on forms provided for that purpose. A bonded user or interstate trucker required to file a report under this section who has not sold, used, or distributed any diesel fuel during the reporting period shall file with the comptroller the report setting forth the facts or information. The failure of a bonded user or interstate trucker to obtain forms from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

(c) No report is required to be filed by:

- (1) an aviation fuel dealer;
- (2) a trip permit user;
- (3) a diesel tax prepaid user;
- (4) a person issuing signed statements; or
- (5) a common or contract carrier.

(d) A permitted interstate trucker who maintains all fuel records in Texas, and all, or substantially all, of whose highway use is made with diesel fuel purchased within this state with the tax paid may be exempted from the quarterly reporting requirements under an annual affidavit to the comptroller attesting to the intrastate, or substantially intrastate, purchases of tax-paid diesel fuel.

(e) On or before August 15th of each odd-numbered calendar year each person required to pay a tax under this section must remit a reasonable estimate of the tax liability for diesel fuel which was required to be collected during the preceding month. A reasonable estimate must be at least an amount equal to the tax due on July 25th for diesel fuel tax owing in June.

[Acts 1981, 67th Leg., p. 1623, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1377, ch. 284, § 6, eff. Sept. 1, 1983.]

#### § 153.222. Refunds of Taxes Paid on Excepted Uses of Diesel Fuel

(a) A dealer who has paid tax on diesel fuel that has been used or sold for use by the dealer for any purpose other than propelling a motor vehicle on the public highways of this state or that has been sold to the United States for its exclusive use, and a user who has paid tax on any diesel fuel that has been used by him for a purpose other than propelling a motor vehicle on the public highways may file a claim for a refund of taxes paid, less the deduction allowed vendors and a filing fee.

(b) A person may file a refund claim for tax paid on the diesel fuel used in motor vehicles that are operated exclusively off the public highways except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in the incidental travel.

(c) A permitted interstate trucker is entitled to a credit equivalent to the tax rate for each gallon paid on all diesel fuel on which the diesel fuel tax has been paid and later consumed in motor vehicles outside the state. If the amount of credit to which the interstate trucker is entitled for any calendar quarter exceeds the amount of tax for which the interstate trucker is liable for diesel fuel consumed in the motor vehicles during the reporting period, the excess shall be allowed as a credit or refund on a timely filed quarterly report against the tax for which the interstate trucker would be otherwise liable for any of the three succeeding quarters. Evidence of the mileage traveled and gallonage consumed and the payment of the diesel fuel tax, on a form that may be required by or is satisfactory to the comptroller, shall be furnished by the interstate trucker claiming the credit or tax refund.

(d) If the quantity of diesel fuel used in Texas by auxiliary power units or power take-off equipment on any motor vehicle can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, the comptroller may approve and adopt the use of any device as a basis for determining the quantity of diesel fuel consumed in those operations for tax credit or tax refund. If no separate metering device or other approved measuring method is provided, the following credit or refund procedures are authorized. A permitted supplier or bonded user who operates diesel-powered

motor vehicles equipped with a power take-off or a diesel-powered auxiliary power unit mounted on the motor vehicle and using the fuel supply tank of the motor vehicle may be allowed a five percent deduction from the taxable gallons used in this state in each motor vehicle so equipped. A user who is required to pay the tax on diesel fuel used in motor vehicles so equipped may file a claim for a refund not to exceed five percent of the total taxable fuel used in this state in each motor vehicle so equipped.

(e) A person who exports or loses by fire or other accident 100 or more gallons of diesel fuel on which the tax has been paid, or who sells diesel fuel in any quantity to the United States for its exclusive use on which the tax has been paid, may file a claim for a refund of the net tax paid to the state as the comptroller may direct.

[Acts 1981, 67th Leg., p. 1624, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.223. Claims for Refunds

(a) A refund claim must be filed with the comptroller on forms provided by the comptroller and show the date of filing, the period covered in the claim, the number of gallons of diesel fuel subject to refund, and other information required by the comptroller. A claim must be supported by one or more original invoices issued to or by the claimant, or such other information as the comptroller deems necessary.

(b) If a motor vehicle is sold, transferred, or destroyed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that year. The owner or operator must submit to the comptroller an affidavit identifying the vehicle, the permit number, the circumstances entitling him to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund to the owner or operator that portion of the payment that corresponds to the number of complete months remaining in the year for which the vehicle was no longer utilized. No refund may be made if the use of the vehicle ceased within the last month of the year.

(c) A person who files a claim for a tax refund on diesel fuel used for a purpose for which a tax refund is not authorized, or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered, forfeits his right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

[Acts 1981, 67th Leg., p. 1625, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 485, ch. 98, § 4, eff. Aug. 29, 1983.]

§ 153.224. When Diesel Fuel Tax Refund May be Filed

(a) Except as provided by this section, a claim for a refund must be filed with the comptroller within one year after the first day of the calendar month following the purchase, use, delivery, export, or loss by fire or other accident of diesel fuel, whichever period expires latest.

(b) An interstate trucker may accumulate credits for four successive calendar quarters, but he must take the credit or claim a refund on a report filed on or before the 25th day following the fourth quarter.

(c) If an audit of a supplier determines that tax-free sales were made to an unauthorized purchaser and the purchaser could have filed for a refund if the tax had been paid at the time of the sale, the unauthorized purchaser must file a refund claim within one year after the date of the final assessment.

[Acts 1981, 67th Leg., p. 1625, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.225. Diesel Fuel Tax Refund Payments and Filing Fee

(a) After examination and approval of the refund claim, the comptroller before issuing a refund warrant shall deduct from the amount of the refund payment:

- (1) the 1½ percent deducted originally by the supplier on the sale or delivery of the diesel fuel; and
- (2) \$1.50 as a filing fee.

(b) The filing fees shall be set aside for the use and benefit of the comptroller in the administration and enforcement of the provisions of this chapter, and for payment of expenses in furnishing the claim forms and other forms. All filing fees shall be paid into the state treasury and shall be paid out on vouchers and warrants in the manner prescribed by law.

[Acts 1981, 67th Leg., p. 1626, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 153.226 to 153.300 reserved for expansion]

SUBCHAPTER D. LIQUEFIED GAS TAX

§ 153.301. Tax Imposed; Rate

(a) A tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state.

(b) The liquefied gas tax rate is five cents a gallon.

[Acts 1981, 67th Leg., p. 1626, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 153.302. Payment of Tax

(a) A person using a liquefied gas-propelled motor vehicle, including a motor vehicle equipped to

use liquefied gas interchangeably with another motor fuel, that is required to be licensed in Texas for use on the public highways of Texas, shall prepay the liquefied gas tax to the comptroller on an annual basis; except that a person holding a motor vehicle dealer's liquefied gas tax decal shall pay the tax to a permitted dealer at the time the fuel is delivered into the fuel supply tank of a motor vehicle.

(b) An interstate trucker operating a motor vehicle licensed in a base state other than Texas and any other out-of-state user shall pay the excise tax on delivery of the liquefied gas into the fuel supply tanks of a motor vehicle.

[Acts 1981, 67th Leg., p. 1626, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2783, ch. 752, § 13(b), eff. Jan. 1, 1982.]

**§ 153.303. Permits; Application; Display**

(a) A dealer who sells taxable liquefied gas, interstate trucker, liquefied gas tax decal user, or a motor vehicle dealer's liquefied gas tax decal permittee shall file an application with the comptroller for the kind and class of a nonassignable permit required by this subchapter.

(b) An application for a permit must be filed on a form provided by the comptroller showing the kind and class of permit desired, the odometer reading of a Class A through F motor vehicle, and other information required by the comptroller.

(c) A permit shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A permit holder shall reproduce the permit and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. A person holding an interstate trucker's permit shall reproduce the permit and carry a copy with each motor vehicle being operated into or from Texas. The liquefied gas tax decal user shall affix the decal in the lower right-hand corner of the front windshield of the passenger side of the vehicle.

[Acts 1981, 67th Leg., p. 1626, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2783, ch. 752, § 13(c), eff. Jan. 1, 1982.]

**§ 153.304. Dealer's Permit**

A dealer's permit authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate or a motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal.

[Acts 1981, 67th Leg., p. 1627, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2783, ch. 752, § 13(d), eff. Jan. 1, 1982.]

**§ 153.305. Liquefied Gas Tax Decal Permit**

(a) A user of liquefied gas for the propulsion of a motor vehicle on the public highways of Texas shall pay in advance annually on each motor vehicle

owned, operated, and licensed in Texas by him, a tax based on the registered gross weight and mileage driven the previous year in the following schedule:

		Less than 5,000 miles	5,000 to 9,999 miles	10,000 miles and over
Class A:	Less than 4,000 pounds	\$24.00	\$48.00	\$72.00
Class B:	4,000 to 10,000 pounds	27.00	54.00	84.00
Class C:	10,001 to 15,000 pounds	39.00	78.00	120.00
Class D:	15,001 to 27,500 pounds	42.00	84.00	168.00
Class E:	27,501 to 43,500 pounds	57.00	114.00	228.00
Class F:	43,501 pounds and over	60.00	120.00	300.00

(b) The first issuance of a liquefied gas tax decal for a Class A through F motor vehicle shall be issued on a basis of estimated miles which will be driven during the one-year period following the date of issuance of the decal.

(c) The following special use liquefied gas tax decal and tax shall be required for the types of vehicles described below:

- Class T: Transit carrier vehicles operated by a transit company . . . . . \$330
- Class Y: Motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation . . . . . 204

(d) An entity holding a valid registration under Article 6686, Revised Civil Statutes of Texas, 1925, as amended, may obtain a decal for each liquefied gas-powered motor vehicle held for sale or resale and pay the tax per gallon to a permitted dealer on each delivery of liquefied gas into the fuel supply tank of the motor vehicle.

[Acts 1981, 67th Leg., p. 1627, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2783, ch. 752, § 13(e), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 484, ch. 98, § 1, eff. Aug. 29, 1983.]

**§ 153.306. Interstate Trucker's Permit**

An interstate trucker's permit authorizes an interstate trucker operating a motor vehicle with a base license plate issued by a state other than Texas to import liquefied gas into this state in the fuel supply tanks of motor vehicles owned or operated by him for commercial purposes, to report and pay the tax due, and to make sales or distributions in Texas from his cargo tanks, but no delivery may be made in Texas into the fuel supply tanks of motor vehicles not bearing a current liquefied gas tax decal without first obtaining the required dealer's permit to make taxable sales. The interstate trucker's permit for users operating a motor vehicle with a base license plate issued by a state other than Texas is in lieu of the liquefied gas tax decal permit required to operate motor vehicles on the highways of the state.

[Acts 1981, 67th Leg., p. 1627, ch. 389, § 1, eff. Jan. 1, 1982.]



§ 153.307. Permits: Periods of Validity

(a) A dealer's permit is permanent and valid as long as the permittee furnishes timely reports as required, or until the permit is surrendered by the holder or canceled by the comptroller.

(b) An interstate trucker's permit is valid from the date of its issuance through December 31 of each calendar year, or until the permit is surrendered by the holder or canceled by the comptroller. The comptroller may renew the permit for each ensuing calendar year if the permittee furnishes timely reports as required.

(c) A liquefied gas tax decal permit is valid from the date of its initial issuance through the last day of the same month of the year following the year it was issued unless the motor vehicle for which the tax is prepaid is sold or no longer used on the highway. After its initial issuance, a liquefied gas tax decal permit shall be issued annually and is valid for one year from the date of its issuance unless the motor vehicle for which the tax is prepaid is sold or no longer used on the public highway. A liquefied gas tax decal permittee must make application for a new permit each year. The ending odometer reading must be provided on the renewal application. In the absence of an ending odometer reading, the previous year's mileage of the motor vehicle shall be presumed to be at least 10,000 miles.

(d) A motor vehicle dealer's liquefied gas tax decal permit shall be issued annually and is valid from the date of its issuance through December 31 of each calendar year unless the motor vehicle is sold at which time the decal shall be removed by the dealer from the motor vehicle. A motor vehicle dealer's liquefied gas tax decal permittee must make application for a new permit each year.

[Acts 1981, 67th Leg., p. 1627, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(f), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 484, ch. 98, § 2, eff. Aug. 29, 1983.]

§ 153.308. Computation of Taxes; Allowances

(a) A permitted dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle on which the tax is required to be collected is liable to the state for the tax imposed, and shall report and pay the tax in the manner required by this subchapter.

(b) A permitted interstate trucker shall report and pay to this state the tax at the rate imposed on each gallon of liquefied gas delivered by him into the fuel supply tank of a motor vehicle, unless the tax has been paid to a permitted dealer, and shall report and pay the tax on each gallon of liquefied gas imported into this state in the fuel supply tanks of motor vehicles owned or operated by him and consumed in the operation of the motor vehicles on the public highways of this state.

(c) The tax on one percent of the taxable gallons of liquefied gas sold in this state shall be allocated to the permitted dealer making the sale for the expense of collecting, accounting for, reporting, and remitting the taxes collected and keeping the records. The allocation allowance shall be deducted by the permitted dealers in the payment to the state.

(d) The tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons permitted as interstate truckers shall be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and remitting the taxes due.

[Acts 1981, 67th Leg., p. 1628, ch. 389, § 1, eff. Jan. 1, 1982. Renumbered from § 153.309 by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(h), eff. Jan. 1, 1982.]

A former § 153.308, relating to security for payment of tax, derived from Acts 1981, 67th Leg., p. 1628, ch. 389, § 1, was repealed by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(g).

§ 153.309. Records

(a) A dealer shall keep for four years, open to inspection at all times by the comptroller and the attorney general, a complete record of all liquefied gas sold or delivered for taxable purposes.

(b) An interstate trucker shall keep for four years, open to inspection by the comptroller and the attorney general, a record of:

- (1) the total miles traveled in all states by all the interstate trucker's motor vehicles traveling into or from Texas and the total quantity of liquefied gas used in the motor vehicles; and
- (2) the total miles traveled in Texas and the total quantity of liquefied gas purchased in Texas, showing both tax-paid fuel delivered into the fuel supply tanks of motor vehicles and tax-free fuel delivered into storage facilities in Texas.

(c) Each taxable sale or delivery of liquefied gas into the fuel supply tanks of a motor vehicle, including deliveries by interstate truckers from bulk storage, shall be covered by an invoice. The invoice must be printed and contain the following:

- (1) the preprinted or stamped name and address of the permitted dealer or interstate trucker;
- (2) the date;
- (3) the number of gallons delivered;
- (4) the mileage recorded on the odometer;
- (5) the state and state highway license number;
- (6) the signature of the driver of the motor vehicle; and
- (7) the amount of tax paid or accounted for separately from the selling price.

(d) The invoice must be carried with the vehicle and will serve as a trip permit.

(e) A liquefied gas tax decal permittee required to report beginning and ending odometer readings may deduct the miles travelled outside the State of Texas from the total miles travelled. A record of miles travelled by the vehicle in states other than

Texas must be maintained and submitted with the renewal each year. A decal may not be renewed for an amount less than the rate for 4,999 miles annually.

[Acts 1981, 67th Leg., p. 1628, ch. 389, § 1, eff. Jan. 1, 1982. Renumbered from § 153.310 and amended by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(h)(i), eff. Jan. 1, 1982.]

#### § 153.310. Reports and Payments

(a) A permitted dealer, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A permitted dealer who has not made taxable sales during the reporting period shall file with the comptroller the report setting forth the facts or information.

(b) Every permitted interstate trucker, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A report shall be filed with the comptroller and must contain the number of miles traveled in this state, the number of miles traveled outside this state, and other information required by the comptroller on forms provided for that purpose. An interstate trucker who is required to file a report under this section and who has not made interstate trips or used liquefied gas in motor vehicles in Texas during the reporting period shall file with the comptroller the report setting forth the facts or information.

[Acts 1981, 67th Leg., p. 1629, ch. 389, § 1, eff. Jan. 1, 1982. Renumbered from § 153.311 by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(h), eff. Jan. 1, 1982.]

#### § 153.311. Refunds; Transfer of Decals

(a) If a motor vehicle bearing a liquefied gas tax decal is sold or transferred, the seller and purchaser shall promptly notify the comptroller of the sale or transfer and a new decal shall be issued in the new purchaser's name.

(b) If a motor vehicle bearing a liquefied gas tax decal is destroyed or the liquefied gas carburetor system removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that year. The owner or operator shall submit to the comptroller an affidavit identifying the vehicle, the permit number, the decal number assigned to the vehicle, the circumstances entitling him to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the year for which the tax has been paid, beginning with the month following the date on which the vehicle or the liquefied gas carburetor was no longer utilized. No refund may be made if the use of the vehicle ceased within the last month of the year.

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(c) A permitted interstate trucker is entitled to a refund of the amount of the Texas liquefied gas tax paid on each gallon of liquefied gas subsequently used outside this state. On verification by the comptroller that the interstate trucker's report was timely filed with all information required, he shall issue a warrant to the interstate trucker for the amount of the refund less the one percent deducted originally by the permitted dealer making the sale and a filing fee of \$1.50. Failure to file an interstate trucker report by the 25th of the month following the end of a calendar quarter forfeits the right to a refund.

[Acts 1981, 67th Leg., p. 1629, ch. 389, § 1, eff. Jan. 1, 1982. Renumbered from § 153.312 by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(h), eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 486, ch. 98, § 5, eff. Aug. 29, 1983.]

#### § 153.312. Renumbered as § 153.311 by Acts 1981, 67th Leg., p. 2784, ch. 752, § 13(h), eff. Jan. 1, 1982

[Sections 153.313 to 153.400 reserved for expansion]

### SUBCHAPTER E. PENALTIES AND OFFENSES

#### § 153.401. Failure to Pay Tax or Report

(a) If a person having a permit as a distributor, supplier, user, dealer, or interstate trucker fails to file a report as required by this chapter or fails to pay a tax imposed by this chapter when due, the person forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) The minimum penalty imposed by this section is \$1.

[Acts 1981, 67th Leg., p. 1630, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 450, ch. 93, § 2, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

#### § 153.402. Prohibited Acts; Civil Penalties

A person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person:

- (1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's or a trip permit when the person is required to hold one of those permits;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal;

(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;

(5) transports motor fuel in any cargo tank designated "out of order" by the comptroller;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(7) makes a taxable sale or delivery of liquefied gas without holding a valid dealer's permit;

(8) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(9) makes a tax-free or taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal;

(10) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(11) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(12) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(13) furnishes a signed statement to a supplier for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(14) fails or refuses to comply with or violates a provision of this chapter; or

(15) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter.

[Acts 1981, 67th Leg., p. 1630, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2780, ch. 752, § 13(a), eff. Jan. 1, 1982.]

### § 153.403. Criminal Offenses

Except as provided by Section 153.404 of this code, a person commits an offense if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;

(2) is required to hold a valid trip permit or interstate trucker's permit, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's permit;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal;

(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;

(5) transports motor fuel in any cargo tank designated "out of order" by the comptroller;

(6) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(7) makes a sale or delivery of liquefied gas on which he knows the tax is required to be collected, if at the time the sale is made he does not hold a valid dealer's permit;

(8) makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

(9) makes a tax-free or taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal;

(10) transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;

(11) sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;

(12) owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;

(13) refuses to permit the comptroller or the attorney general to inspect, examine, and audit a book or record required to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, common or contract carrier, or any person required to hold a permit under this chapter;

(14) refuses to permit the comptroller or the attorney general to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered, or used;

(15) refuses to permit the comptroller or the attorney general 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;

(16) as a diesel tax prepaid user fails to prepay the tax on every diesel-powered motor vehicle owned or operated by him;

(17) mutilates, destroys, or secretes a book or record required by this chapter to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or a person required to hold a permit under this chapter;

(18) is a distributor, bonded user, interstate trucker, or supplier and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(19) conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter or refuses to make sales of motor fuel on the volume-corrected basis prescribed by this chapter;

(20) refuses, while transporting motor fuel, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(21) refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(22) transports motor fuel for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(23) is a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or other person required to hold a permit under this chapter, or the agent or employee of one of those persons and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person;

(24) transports in any manner motor fuel under a false cargo manifest;

(25) engages in a motor fuel transaction that requires that the person have a permit under this chapter without then and there holding the required permit;

(26) makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(27) forges, falsifies, or alters an invoice prescribed by law;

(28) makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(29) furnishes to a supplier a signed statement for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(30) holds an aviation fuel dealer's permit and makes a taxable sale or use of any gasoline or diesel fuel;

(31) fails to remit any tax funds collected by a distributor, supplier, user, dealer, interstate trucker, or any other person required to hold a permit under this chapter;

(32) makes a sale of diesel fuel tax free into a storage facility of a person who:

(A) is not permitted as a supplier, as an aviation fuel dealer, as a bonded user, or as a diesel tax prepaid user of diesel fuel; or

(B) does not furnish to the permitted supplier a signed statement prescribed in Section 153.205 of this code; or

(33) makes a sale of gasoline tax free to any person who is not permitted as either a distributor or an aviation fuel dealer.

[Acts 1981, 67th Leg., p. 1631, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2772, ch. 752, §§ 8(a), 13(a), eff. Jan. 1, 1982.]

#### § 153.404. Criminal Offenses: Special Provisions and Exceptions

(a) A person does not commit an offense under Section 153.403 of this code unless he intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Section 153.403(12) of this code.

(b) Each day that a refusal prohibited under Section 153.403(13), (14), or (15) of this code continues is a separate offense.

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

(d) The prohibition under Section 153.403(33) of this code does not apply to the tax-free sale or distribution of gasoline under Section 153.104(2) or (4) of this code.

[Acts 1981, 67th Leg., p. 1633, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 153.405. Criminal Penalties

(a) An offense under Sections 153.403(1) through (16) of this code is a Class C misdemeanor.

(b) An offense under Sections 153.403(17) through (19) of this code is a Class B misdemeanor.

(c) An offense under Sections 153.403(20) through (22) of this code is a Class A misdemeanor.

(d) An offense under Sections 153.403(23) through (33) of this code is a felony of the third degree.

[Acts 1981, 67th Leg., p. 1633, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.406. Criminal Penalties: Corporations and Associations**

(a) Except as provided by Subsection (b) of this section, Subchapter E, Chapter 12, Penal Code,<sup>1</sup> applies to offenses under this chapter committed by a corporation or association.

(b) The fine that may be fixed by the court under Section 12.51(b)(2), Penal Code, for a Class A or Class B misdemeanor, is any amount not to exceed \$5,000. The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(c) In addition to a sentence imposed on a corporation, the court may order the corporation to give notice of the conviction to any person.

[Acts 1981, 67th Leg., p. 1633, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Penal Code, § 12.51 et seq.

**§ 153.407. Venue of Criminal Prosecutions**

The venue for a prosecution under this subchapter is in Travis County or in the county where the offense occurred.

[Acts 1981, 67th Leg., p. 1634, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 153.408 to 153.500 reserved for expansion]

**SUBCHAPTER F. ALLOCATION OF TAXES**

**§ 153.501. Tax Administration Fund**

(a) Before any other allocation of the taxes collected under this chapter is made, one percent of the gross amount of the taxes shall be deposited in the state treasury in a special fund, subject to the use of the comptroller in the administration and enforcement of this chapter.

(b) The unexpended portion of the special fund shall revert, at the end of the fiscal year, to the highway motor fuel tax fund for allocation to the other funds to which revenue is allocated by this subchapter in proportion to the amounts originally derived from the respective sources.

[Acts 1981, 67th Leg., p. 1634, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.502. Allocation of Unclaimed Refundable Gasoline Taxes**

(a) Each month the comptroller, after making the deductions for refund purposes, shall determine as accurately as possible the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, and on which refund of the tax has not been made and against which limitation has run for filing claim for refund of the tax. From the number of gallons so determined the comptroller shall compute the amount of taxes that would

have been refunded under the law had refund claims been filed in accordance with the law.

(b) The comptroller shall allocate and deposit these unclaimed refunds as follows:

(1) 25 percent of the revenues based on unclaimed refunds of taxes paid on motor fuel used in motorboats shall be deposited to the credit of the available school fund; and

(2) the remaining 75 percent of the revenue shall be deposited to the credit of the game, fish, and water safety fund.

[Acts 1981, 67th Leg., p. 1634, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 153.503. Allocation of Gasoline Tax**

(a) Each month the comptroller, after making all deductions for refund purposes and for the funds derived from unclaimed refunds, shall allocate the net remainder of the taxes collected under Subchapter B of this chapter<sup>1</sup> as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of monthly allocations, which sum shall be used by the State Department of Highways and Public Transportation for the construction and improvement of farm-to-market roads; except that one-half of the amount may be used for the maintenance of farm-to-market roads during a fiscal year for which at least \$15 million is appropriated for the construction of farm-to-market roads under Article 6673-1, Revised Civil Statutes of Texas, 1925.

(b) All receipts due the available school fund which are in the highway motor fuel tax fund on August 31 of each fiscal year shall be credited to the available school fund on August 31 of each fiscal year.

[Acts 1981, 67th Leg., p. 1634, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2777, ch. 752, § 9(e), eff. Jan. 1, 1982.]

<sup>1</sup> Section 153.101 et seq.

**§ 153.504. Allocation of Diesel Fuel Tax**

Each month the comptroller, after making deductions for refund purposes, and for the administration and enforcement of this chapter, shall allocate

the remainder of the taxes collected under Subchapter D of this chapter<sup>1</sup> as follows:

- (1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and
- (2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

[Acts 1981, 67th Leg., p. 1635, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 153.301 et seq.

#### § 153.505. Allocation of Liquefied Gas Tax

Each month the comptroller, after making deductions for refund purposes and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter B of this chapter,<sup>1</sup> in the proportions as follows:

- (1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and
- (2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

[Acts 1981, 67th Leg., p. 1635, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 153.101 et seq.

### CHAPTER 154. CIGARETTE TAX

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- 154.106. Application for a Distributor's Permit.  
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SUBCHAPTER A. GENERAL PROVISIONS

§ 154.001. Definitions

In this chapter:

- (1) "Cigarette" means a roll for smoking made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco, but does not include a cigar.  
 (2) "Individual package of cigarettes" means:  
 (A) the smallest package of cigarettes ordinarily sold at retail; or  
 (B) any size package of cigarettes taxed by the United States.  
 (3) "Place of business" means:  
 (A) a place where cigarettes are sold;  
 (B) a place where cigarettes are stored or kept for sale or consumption; or  
 (C) a vehicle, train, or vending machine if cigarettes are sold from the vehicle, train, or vending machine.  
 (4) "Stamp" means a stamp that is printed, manufactured, or made by authority of the comptroller; issued, sold, or circulated by the treasurer; and used to show payment of a tax imposed by this chapter.  
 (5) "Counterfeit stamp" means a stamp, label, print, tag, or token that is not authorized by the comptroller or not issued by the treasurer, but is used to show payment of a tax imposed by this chapter.  
 (6) "Previously used stamp" means a stamp that has been used to show payment of a tax imposed by this chapter and is again used, sold, or possessed to sell or use, to show payment of a tax imposed by this chapter.  
 (7) "First sale" means:

- (A) the first sale or distribution of cigarettes in intrastate commerce;  
 (B) the first use or consumption of cigarettes in this state; or  
 (C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(8) "Drop shipment" means a delivery of cigarettes received by a person in this state if payment for the cigarettes is made to the shipper or seller by a person other than the consignee.

(9) "Distributor" means a person in this state who:

- (A) manufactures or produces cigarettes;  
 (B) ships, transports, imports into this state, or acquires or possesses cigarettes and makes a first sale of the cigarettes in this state; or  
 (C) is authorized to purchase on open account unstamped cigarettes direct from all manufacturers who have general distribution of cigarettes in this state and:

- (i) sells cigarettes to licensed wholesalers; or  
 (ii) acquires or possesses unstamped cigarettes to make a first sale in this state.

(10) "Wholesale dealer" means a person, other than a distributor or a salesman who is employed by a manufacturer handling only the products of the salesman's employer, who sells or distributes cigarettes in this state for resale.

(11) "Retail dealer" means:

(A) a person, other than a distributor or wholesale dealer, who sells or distributes cigarettes, offers them for sale or distribution, or possesses them for the purpose of sale or distribution;

(B) a person, other than a distributor or wholesale dealer, who distributes or disposes of cigarettes in unbroken individual packages or in quantities of 10 or more if no sale is involved; or

(C) a coin-operated cigarette or tobacco products vending machine.

(12) "Distributing agent" means a person in this state who is an agent of a person outside this state, receives cigarettes in interstate commerce, and stores the cigarettes for distribution or delivery to distributors, wholesale dealers, and retail dealers upon orders from the person outside this state.

(13) "Solicitor" means an individual who offers cigarettes for sale in this state for delivery in this state for one person's account.

[Acts 1981, 67th Leg., p. 1638, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.002 to 154.020 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND RATE OF TAX

§ 154.021. Imposition and Rate of Tax

- (a) A tax is imposed on a person who uses or disposes of cigarettes in this state.

(b) The tax rates are:

- (1) \$9.25 per thousand on cigarettes weighing three pounds or less per thousand; and
- (2) \$11.35 per thousand on cigarettes weighing more than three pounds per thousand.

[Acts 1981, 67th Leg., p. 1640, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.022. First Sale

The cigarette tax is imposed and becomes due and payable when a person in this state receives cigarettes to make a first sale.

[Acts 1981, 67th Leg., p. 1640, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.023. Impact of Tax

The ultimate consumer or user in this state bears the impact of the tax imposed by this chapter. If another person pays the tax, the amount of the tax is added to the price to the ultimate consumer or user.

[Acts 1981, 67th Leg., p. 1640, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.024. Importation of Small Quantities

(a) A person who imports and personally transports 200 or fewer cigarettes into this state is not required to pay the tax imposed by this chapter if the person uses the cigarettes and does not sell them or offer them for sale.

(b) Employees of the Texas Alcoholic Beverage Commission who collect taxes on alcoholic beverages at ports of entry shall collect at the ports of entry the tax imposed by this chapter on cigarettes imported into this state.

(c) The comptroller and the Texas Alcoholic Beverage Commission shall make rules for the administration of this section.

[Acts 1981, 67th Leg., p. 1640, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.025 to 154.040 reserved  
for expansion]

### SUBCHAPTER C. TAX STAMPS AND METERS

#### § 154.041. Stamp Required

(a) A person who pays a tax imposed by this chapter shall securely affix a stamp to each individual package of cigarettes to show payment of the tax.

(b) Each person, other than a distributing agent, bonded distributor, or common carrier, shall obtain the necessary stamps before receiving or accepting delivery of unstamped cigarettes. The possession of unstamped cigarettes without the possession of the requisite amount or number of stamps is prima facie evidence that the cigarettes are possessed for the purpose of making a first sale without stamps

and without payment of a tax imposed by this chapter.

(c) The absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(d) A manufacturer of cigarettes outside this state may purchase a stamp and affix it to the individual package and no further payment of the tax is required.

(e) A stamp is not required on a sample package of cigarettes if the manufacturer reports the tax and pays it directly to the state and further provided that the package, excluding cellophane or other clear wrapping, has printed or attached on it a notice stating that it is a complimentary package, not for sale, and that all applicable state taxes have been paid by the manufacturer.

[Acts 1981, 67th Leg., p. 1640, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 788, ch. 188, § 1, eff. May 21, 1983.]

#### § 154.042. Distributor

(a) A distributor shall affix the required tax stamps to each individual package that is to be sold, offered for sale, consumed, distributed, handled or transported.

(b) Each distributor in this state shall affix the required stamps within 96 hours after receiving the cigarettes, excluding Saturdays, Sundays, and legal holidays.

[Acts 1981, 67th Leg., p. 1641, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.043. Sale of Stamps

Except as provided in Section 154.044 of this code, only the treasurer may sell cigarette stamps. The stamps may be sold only in unbroken sheets of 100. The purchaser shall send the order for stamps directly to the treasurer.

[Acts 1981, 67th Leg., p. 1641, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.044. Purchase From a Distributor

(a) If a distributor does not possess sufficient unused stamps to cover the distributor's inventory of unstamped cigarettes, the comptroller may allow the distributor to purchase the required stamps from any distributor through a requisition from the comptroller so that the unstamped cigarettes may be stamped immediately under the direction of the comptroller.

(b) The comptroller may issue the requisition. The requisition shall be in triplicate on a form prescribed by the comptroller. The copies shall be designated "original," "duplicate," and "triplicate." The comptroller shall keep the original and send the duplicate to the purchaser and the triplicate to the seller. The purchaser and seller shall keep their respective copies available at all times for two years



for inspection by the comptroller and the attorney general.

[Acts 1981, 67th Leg., p. 1641, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.045. Recall by Comptroller**

(a) The comptroller may recall unused stamps that have been sold by the treasurer.

(b) If the comptroller recalls stamps, the purchaser, on the comptroller's demand, shall surrender the stamps to the treasurer for exchange.

(c) If the comptroller recalls stamps and the treasurer receives them from the purchaser, the treasurer shall issue stamps with different serial numbers for the recalled stamps.

[Acts 1981, 67th Leg., p. 1641, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.046. Invoice for Stamps**

(a) The treasurer shall send an invoice for stamps to the purchaser.

(b) The treasurer shall prescribe the form of the invoice.

(c) The invoice shall be issued in triplicate and numbered consecutively. The invoice must show:

- (1) the date of sale;
- (2) the name and address of the purchaser;
- (3) the number of stamps;
- (4) the serial numbers of the stamps; and
- (5) the denomination and value of the stamps.

(d) The treasurer shall sign the invoice and send the original and the stamps to the purchaser. The treasurer shall keep a copy of the invoice and send a copy to the comptroller.

(e) The purchaser shall have the original invoice available at all times for two years for inspection by the comptroller and the attorney general.

[Acts 1981, 67th Leg., p. 1641, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.047. Stamps Shipped With Draft Attached**

(a) A distributor may order stamps to be shipped to a bank with which the distributor regularly transacts business if the bank is authorized to do business under the laws of this state and the United States. The treasurer may ship the stamps to the bank with the invoice required by Section 154.046 of this code and a form draft.

(b) The state auditor shall prescribe the form of the draft. The draft must show:

- (1) the amount of the draft;
- (2) the name of the distributor;
- (3) the name and address of the bank; and
- (4) the date of shipment.

(c) If the draft is not paid within 20 days after the date of the draft, the bank shall return the draft and stamps to the treasurer. The treasurer shall notify the distributor to appear before the treasurer

to show cause why the distributor should not be denied the privilege of ordering stamps shipped with draft attached. If the distributor fails to show good cause, the treasurer may stop shipping stamps with draft attached.

[Acts 1981, 67th Leg., p. 1642, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.048. Stamp Meters**

(a) The comptroller may authorize a licensed distributor to use a stamp metering machine to impress on or to attach to each package of cigarettes evidence of tax payment. The comptroller shall adopt rules for the use of tax meter stamps.

(b) No distributor may use a tax meter stamp without authorization from the comptroller. The comptroller may revoke or suspend without prior notice authorization to use tax meter stamps.

[Acts 1981, 67th Leg., p. 1642, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.049. Meter Settings**

A distributor using a stamp metering machine shall submit a request for a setting on a form furnished by the treasurer. The distributor shall at his own expense send the meter with the proper payment to the treasurer. The treasurer shall set and return the meter, with insurance and shipping cost collect on delivery. The treasurer shall keep the key to the meter. Only the treasurer may remove or break the seal on the meter. A distributor may request meter settings only in units of 100. No distributor may request a meter setting of more than 99,900.

[Acts 1981, 67th Leg., p. 1642, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.050. Payment**

(a) The treasurer shall require that payment in full for stamps or meter settings be made within 30 days after the date stamps or a set meter is received by the distributor, except that at the close of each biennium, payment for stamps or meter settings purchased or received on or before August 16 of that fiscal year shall be made in full on or before August 31 of that fiscal year. When the treasurer receives the order for stamps or a meter setting, the treasurer shall ship the stamps or the set meter with a certified statement showing the amount due. Except as provided in this section, the distributor shall forward payment in full within 30 days after the date the stamps or set meter and certified statement are received.

(b) The treasurer may not ship stamps or set a meter without advance payment under this section unless the distributor has filed the bond provided for in Section 154.051 of this code.

[Acts 1981, 67th Leg., p. 1642, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2779, ch. 752, § 12, eff. Jan. 1, 1982.]

**§ 154.051. Payment Bond**

(a) A distributor may file a surety bond, approved by the treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on timely payment in full for stamps or a meter setting. The treasurer shall set the amount of the bond at 1½ times the amount of stamps and meter setting requested by the distributor and approved by the treasurer to be purchased for the following month. The treasurer shall accept payment by a company check or by a personal check of a bonded distributor.

(b) If a bonded distributor fails to pay in full by the due date, the treasurer shall notify the distributor within five days after the due date to appear before the treasurer to show cause why the treasurer should not deny the distributor the privilege of ordering stamps without advance payment. If a distributor fails to show good cause, the treasurer may discontinue shipping stamps or setting meters without advance payment and may enforce payment of the bond.

[Acts 1981, 67th Leg., p. 1643, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.052. Distributor's Discount**

(a) A licensed distributor is entitled to a discount of 2.75 percent of the face value of stamps purchased, except that an out-of-state purchaser residing in a state that does not give a discount on cigarette tax stamps purchased by a cigarette distributor residing in this state may not purchase stamps at a discount as provided by this section.

(b) If a distributor violates a provision of this chapter, the distributor shall pay the full face value for stamps purchased during the period of the offense. The comptroller shall send the treasurer an affidavit setting forth a violation, and the treasurer shall refuse to supply stamps at the discount until the distributor has paid any unauthorized discounts and has satisfied the comptroller that the distributor is not in violation of a provision of this chapter.

[Acts 1981, 67th Leg., p. 1643, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.053. Manufacture of Stamps**

(a) The comptroller shall design and have printed or manufactured cigarette tax stamps. If the comptroller determines that it is necessary for the best enforcement of this chapter, the comptroller may change the design of the stamps. The comptroller shall determine the size, denomination, and quantity of stamps manufactured. The stamps shall be manufactured so that they may be easily and securely attached to an individual package of cigarettes. The comptroller may designate the method of identification for the stamps. The comptroller shall award the contract for the printing or manufacturing to the person submitting the lowest and best bid that will give the best protection to the state in enforcing this chapter.

(b) When the treasurer receives a new design of stamps authorized by the comptroller, the treasurer shall designate the date of issue of the new stamps by issuing a proclamation. The date of the proclamation is the date of issue.

[Acts 1981, 67th Leg., p. 1643, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.054. Redemption of Stamps**

(a) The treasurer shall redeem unused cigarette tax stamps that were lawfully issued before a design or denomination change. Except as provided by Subsection (c) of this section, the treasurer shall exchange old stamps for new stamps at face value.

(b) If a design or denomination change is made, a person who has stamps of the old design or denomination shall send the stamps to the treasurer for exchange. In the case of a design change, the person shall send the stamps within 60 days after the date of issue. In the case of a denomination change, the person shall send the stamps within 60 days after the effective date of a tax increase.

(c) The treasurer may not exchange any stamps unless the treasurer is satisfied that the stamps were properly purchased and paid for by the person exchanging the stamps. The treasurer may refuse to exchange stamps that are effaced or mutilated.

(d) A stamp not exchanged within the 60-day period provided for in this section is void.

(e) Cigarettes stamped with an old design stamp more than 60 days after the date of a new design are unstamped cigarettes.

(f) Stamps of an old denomination removed from cigarettes determined by the comptroller to be unsalable may be redeemed under rules made by the comptroller.

[Acts 1981, 67th Leg., p. 1643, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.055. Exchange**

The treasurer shall exchange stamps in unbroken sheets of 100 for stamps of a different denomination.

[Acts 1981, 67th Leg., p. 1644, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.056. Refunds**

The treasurer may make refunds on unused stamps in unbroken sheets of 100. The treasurer may not make a refund unless the treasurer is satisfied that the stamps were properly purchased and paid for by the person requesting the refund. The treasurer shall make the refund from revenue collected under this chapter before the revenue is allocated.

[Acts 1981, 67th Leg., p. 1644, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.057. **Obsolete Stamps**

The comptroller has authority over obsolete stamps. The comptroller shall burn obsolete stamps.

[Acts 1981, 67th Leg., p. 1644, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.058. **Inventory if Denomination Changes**

On the effective date of a tax increase, a retail or wholesale dealer who has 2,000 or more cigarettes stamped with stamps of an old denomination shall immediately inventory the packages and file a report of the inventory with the comptroller. The dealer shall attach to the inventory a cashier's check payable to the treasurer equal to the amount of additional tax due because of the tax increase. The dealer shall keep a copy of the inventory and the purchaser's copy of the cashier's check.

[Acts 1981, 67th Leg., p. 1644, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.059. **Denomination Change**

No person may, 60 days after a tax increase:

- (1) possess stamps of an old denomination; or
- (2) sell, offer for sale, or possess for the purpose of sale cigarettes stamped with stamps of an old denomination.

[Acts 1981, 67th Leg., p. 1644, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.060. **Cancellation**

No person may cancel, mark, or mutilate a stamp on a package of cigarettes so that the comptroller is prevented from or hindered in examining the genuineness of the stamp.

[Acts 1981, 67th Leg., p. 1644, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.061 to 154.100 reserved for expansion]

SUBCHAPTER D. PERMITS

§ 154.101. **Permits**

(a) A person may not engage in business as a distributor, wholesale dealer, or retail dealer unless the person has applied for and received the applicable permit from the comptroller.

(b) A distributor, wholesale dealer, and retail dealer shall obtain a permit for each place of business owned or operated by the distributor, wholesale dealer, or retail dealer.

[Acts 1981, 67th Leg., p. 1645, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.102. **Solicitor's Permit**

(a) A person may not engage in business as a solicitor unless the person has applied for and received a solicitor's permit from the comptroller.

(b) A solicitor's permit must set forth the name and address of the vendors and employers the solicitor represents. The solicitor may not represent a vendor or employer whose name is not on the permit.

[Acts 1981, 67th Leg., p. 1645, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.103. **Distributing Agent's Permit**

(a) A person may not engage in business as a distributing agent unless the person has applied for and received a distributing agent's permit from the comptroller.

(b) The comptroller shall furnish the application form for the permit if the applicant makes a written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(c) The application must include:

- (1) the name under which the distributing agent will do business;
- (2) the address of the principal office and place of business in this state to which the permit applies;
- (3) if the applicant is not an individual, the principal officers' or members' names and addresses; and
- (4) any other information the comptroller requests.

(d) A distributing agent shall obtain a permit for each place of business owned or operated by the distributing agent.

[Acts 1981, 67th Leg., p. 1645, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.104. **Issuance of Distributing Agent's Permit**

(a) The comptroller shall issue a permit to a distributing agent for a designated place of business if the comptroller has received the application and fee.

(b) The permits are nonassignable and consecutively numbered.

(c) The distribution or delivery of cigarettes by a distributing agent to a licensed distributor on this state under instructions received from outside this state is not a first sale.

[Acts 1981, 67th Leg., p. 1645, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.105. **Forms**

The comptroller shall prescribe the form for an application for a permit to be a wholesale dealer, retail dealer, distributor, or distributing agent.

[Acts 1981, 67th Leg., p. 1645, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.106. **Application for a Distributor's Permit**

(a) The comptroller may direct a distributor to file an application at any time. The applicant shall

accurately set forth the information required on the application. The comptroller may require, either on the application or in a supplement, information about the applicant that the comptroller believes is necessary to determine whether the applicant may receive a permit.

(b) If the applicant is a corporation, association, joint venture, syndicate, partnership, or proprietorship, the comptroller may require each officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, member, owner, and managing employee to furnish information as provided for in this section.

[Acts 1981, 67th Leg., p. 1645, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.107. Distributor's Permit Denied

The comptroller may reject an application and deny a distributor's permit if the comptroller after notice and opportunity for hearing finds that:

(1) the premises where business will be conducted are not adequate to protect the revenue; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or if the applicant is a partnership, a partner or manager:

(A) is, because of business experience, financial standing, trade connections, previous business affiliation, prior employment, or prior conviction of a felony, not likely to comply with the provisions of this chapter; or

(B) has failed to disclose any required material information or has made a material false statement in the application.

[Acts 1981, 67th Leg., p. 1646, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.108. Exception for Personal Use

If a distributor acquires cigarettes for personal use or consumption and not for sale, gift, or other disposition:

(1) the distributor is not required to have a distributor's permit, but shall comply with all other provisions of this chapter; and

(2) the treasurer may sell stamps to the distributor in quantities of less than unbroken sheets of 100.

[Acts 1981, 67th Leg., p. 1646, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.109. Application for Wholesale or Retail Dealer's Permit

(a) The comptroller shall furnish the application form to an applicant on the applicant's written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(b) The application must include:

(1) the manner in which the applicant will do business;

(2) the applicant's principal office, residence, and place of business in Texas to which the permit is to apply;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses, not to exceed three; and

(4) any other information the comptroller requests.

[Acts 1981, 67th Leg., p. 1646, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.110. Issuance of Permits

(a) The comptroller shall issue a permit to a distributor, wholesale dealer, or retail dealer if the comptroller:

(1) has received the application and fee;

(2) believes that the applicant has complied with the conditions of issuance; and

(3) determines that issuing the permit will not jeopardize the revenue.

(b) The permit shall be issued for a designated place of business.

(c) The permits are nonassignable and shall be consecutively numbered. The permit must show the kind of permit and authorize the sale of cigarettes in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or reasonable rules of the comptroller are violated.

[Acts 1981, 67th Leg., p. 1646, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.111. Licensing Year; Fees

(a) A permit required by this chapter expires on the last day of February of each year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) \$100 for a distributing agent's permit;

(2) \$25 for a distributor's permit;

(3) \$15 for a wholesale dealer's permit;

(4) \$5 for a retail dealer's permit; and

(5) \$1 for a solicitor's permit.

(c) The comptroller shall prorate the fee for a new or renewal permit required by Section 154.101 or 154.103 of this code by allowing a discount computed by quarters of the licensing year.

[Acts 1981, 67th Leg., p. 1647, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.112. Additional Fees

(a) A person who is required by this chapter to have a permit and who does not obtain a renewal permit before the beginning of the licensing year shall pay a late application fee of \$1 to the comptroller at the time the person pays the permit fee.

(b) If the comptroller must visit a permit holder to collect a permit fee due under this chapter, the permit holder shall pay a service fee of \$5 in addition to the permit fee.

[Acts 1981, 67th Leg., p. 1647, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.113. Permit for More Than a Year**

If a permit expires within three months after the date of issuance or renewal, the comptroller, with the consent of the permit holder, may collect the discounted permit fee or the fee for a current permit plus a fee for the next licensing year and issue a permit or permits for both periods.

[Acts 1981, 67th Leg., p. 1647, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.114. Suspension or Revocation of a Permit**

(a) The comptroller shall give notice to a person at the place of business named in the application for a permit to show cause why a permit should not be suspended or revoked if the comptroller believes that:

- (1) a distributor, wholesale dealer, or retail dealer:
  - (A) has engaged in any activity that endangers the revenue;
  - (B) has not maintained the premises to protect the revenue; or
  - (C) has not notified the comptroller of a business change affecting ownership, operation, or control;
- (2) a distributing agent, distributor, wholesale dealer, or retail dealer:
  - (A) has violated a provision of this chapter; or
  - (B) has violated a rule made under this chapter;
- (3) a wholesale dealer or retail dealer fails to make the inventory required by Section 154.058 of this code; or
- (4) a solicitor does not make the report required by Section 154.211 of this code.

(b) If the person does not show cause, the comptroller shall revoke the permit or suspend it for a period to be determined by the comptroller.

[Acts 1981, 67th Leg., p. 1647, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.115. Permit Required**

(a) If a permit issued under this chapter is revoked or suspended, the person may not sell cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(b) Except at the comptroller's discretion, if a permit is revoked the person may not receive a new

permit within one year after the date of the revocation.

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.116. Treasurer May Refuse to Sell Stamps**

The treasurer may refuse to sell stamps to a person who has not obtained a distributor's permit or to a distributor who does not have a valid permit.

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.117. Display of Permit**

A person who has a permit required by Section 154.101 of this code shall keep the permit on public display at the place of business of the person to whom it is issued.

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.118. Additional Permits**

(a) If a person operates as a distributor and a wholesale dealer in the same place of business, the person shall obtain only a distributor's permit for the place of business.

(b) If a distributor or wholesale dealer sells cigarettes wholesale and retail, the distributor or wholesale dealer shall obtain a retail dealer's permit in addition to the distributor's permit or wholesale dealer's permit.

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.119. Unexpired Permit**

A person who has a permit that is required by Section 154.101 of this code and that is unexpired may return the permit to the comptroller for credit on the unexpired portion for the purchase of a permit of a higher classification.

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.120. Vending Machine, Train, Vehicle**

If a distributor, wholesale dealer, or retail dealer applies for a permit to sell cigarettes from a vending machine, train, or vehicle, the applicant must show on the application:

- (1) the serial number of the vending machine;
- (2) the make, motor number, and license number of the vehicle; or
- (3) the number of the train and the name of the railway company.

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.121. Revenue**

Revenue from the sale of permits to distributors, wholesale dealers, and retail dealers is allocated in

the same manner as other revenue is allocated by Subchapter J of this chapter.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1648, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 154.601 et seq.

[Sections 154.122 to 154.150 reserved for expansion]

#### SUBCHAPTER E. INTERSTATE BUSINESS

##### § 154.151. Comptroller

The comptroller may make rules to regulate the sale of cigarettes that are for movement into a state adjoining this state and that are stamped with the tax stamps of the adjoining state.

[Acts 1981, 67th Leg., p. 1649, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 154.152. Interstate Stock

(a) If a person executes and files with the comptroller a good and sufficient surety bond signed by the person and a good and sufficient surety company or companies authorized to do business in this state, the person may set aside unstamped cigarettes for interstate business. The person shall keep the interstate stock in a separate part of the building from the stamped stock. If the person does not keep the interstate stock separate, the stock shall be considered intrastate stock and be subject to the same requirements as cigarettes possessed for the purpose of a first sale.

(b) The bond shall be payable to the state in Austin, Travis County, and conditioned upon full and faithful performance of the requirements of this chapter. The comptroller, with the approval of the attorney general, shall prescribe the form of the bond.

(c) The bond shall be approved by and acceptable to the comptroller. The comptroller shall set the amount of the bond at not less than \$250 nor more than double the amount necessary to stamp the largest quantity of cigarettes set aside at any time.

(d) If a person sets aside more cigarettes than permitted under the bond, the cigarettes are subject to the same requirements as cigarettes in intrastate commerce.

[Acts 1981, 67th Leg., p. 1649, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 154.153. Additional Bond

The comptroller shall require an additional or new bond if an existing bond becomes insufficient or a surety becomes unsatisfactory. The person shall supply the additional or new bond within 10 days after the date of the demand, and if the person refuses, the comptroller may cancel any existing bond made by the person. If the comptroller cancels a bond, the person, within 48 hours after cancellation, excluding Sundays and legal holidays,

shall affix the appropriate stamps to cigarettes received before the cancellation.

[Acts 1981, 67th Leg., p. 1649, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.154 to 154.200 reserved for expansion]

#### SUBCHAPTER F. RECORDS AND REPORTS

##### § 154.201. Record of Cigarettes

(a) A distributor, wholesale dealer, or retail dealer shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record of cigarettes purchased and of cigarettes received. The record must include all invoices, bills of lading, waybills, freight bills, express receipts or copies of express receipts, and any shipping records furnished by the carrier and the seller or shipper.

(b) A distributor, wholesale dealer, or retail dealer shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record in a well-bound book that provides complete information on cigarettes purchased and on cigarettes received. The record book must show:

- (1) the date cigarettes were received;
- (2) whether the cigarettes were drop-shipped or otherwise;
- (3) the name and address of the seller and the shipper;
- (4) the place from which the cigarettes were shipped or delivered;
- (5) the place where the cigarettes were received;
- (6) the name of the carrier;
- (7) whether or not the cigarettes were shipped by common carrier;
- (8) the name of the boat or barge if shipped by water;
- (9) if received by mail, whether sent registered mail, insured parcel post, or ordinary mail;
- (10) the number and kind of stamped cigarettes received;
- (11) if received by a distributor, the number and kind of unstamped cigarettes;
- (12) if a distributor, an inventory made on the first of each month showing the number and kind of stamped cigarettes on hand; and
- (13) if a distributor, an inventory made on the first of each month showing the number and kind of unstamped cigarettes on hand.

[Acts 1981, 67th Leg., p. 1649, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 154.202. Record of Stamps

(a) A distributor shall keep at each place of business in this state, except as provided by Section 154.209 of this code, the invoice of stamps purchased or received from the treasurer and a record in a well-bound book that provides complete infor-

mation on stamps purchased and the disposition of the stamps.

(b) The record book must show:

- (1) the date of receipt of stamps purchased;
- (2) the number or quantity of stamps purchased;
- (3) the denomination of stamps purchased;
- (4) the amount paid for the stamps;
- (5) if stamps were sold pursuant to Section 154.044 of this code, the name of the purchaser, the number or quantity of stamps, and the denomination and face value of the stamps;
- (6) the number or quantity of and the denomination and face value of stamps sent to or received from the treasurer as an exchange; and
- (7) the inventory of stamps on hand on the first day of each month, showing the number or quantity, denomination, and face value of the stamps.

[Acts 1981, 67th Leg., p. 1650, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.203. Report of Sale or Use**

(a) A distributor or wholesale dealer shall keep at each place of business in this state, except as provided by Section 154.209 of this code, a record of each sale, distribution, or use of cigarettes whether taxed under this chapter or not. The record shall be kept on an invoice supplied by the distributor or wholesale dealer. The invoice shall be supported by the receipts and records furnished by the carrier. The invoice shall be issued in duplicate, unless the sale or distribution is made by drop shipment, in which case the invoice shall be issued in triplicate. The original invoice shall be delivered to the purchaser and the duplicate shall be kept by the distributor or wholesale dealer. If cigarettes are distributed or exchanged in a manner other than a sale, the invoice must explain the transaction. If a distributor or wholesale dealer sells cigarettes at retail, the distributor or wholesale dealer shall issue an invoice to the retail department for cigarettes to be sold at retail, and the distributor or wholesale dealer shall keep the stock invoiced for retail sale separated from other stock.

(b) A distributor or wholesale dealer shall keep at each place of business in this state a record in a well-bound book of all cigarettes sold, distributed, or used by the distributor or wholesale dealer.

(c) The invoice and record book must show for each sale, distribution, or use of cigarettes:

- (1) the date of sale, the distribution, or use;
- (2) the purchaser's name and address;
- (3) the means of delivery;
- (4) if delivered by common carrier, the name of the carrier;
- (5) if delivered by mail, whether by registered mail, insured parcel post, or ordinary mail;
- (6) the designation of drop shipment if the sale is a drop shipment by a distributor;
- (7) the number and kind of cigarettes sold;

(8) if the sale is by a distributor, the number and kind of stamped cigarettes; and

(9) if the sale is by a distributor, the number and kind of unstamped cigarettes.

[Acts 1981, 67th Leg., p. 1650, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.204. Interstate Business**

If a person sells cigarettes in interstate commerce only, the person shall keep the same type of records and make the same type of reports that are required of a distributor.

[Acts 1981, 67th Leg., p. 1651, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.205. Salesman**

A salesman who is employed by a manufacturer, who handles only the product of the employer, and who sells or distributes stamped cigarettes in this state for resale shall keep the same records that are required of a wholesale dealer. The salesman shall deliver the original of the invoice required by Section 154.203 of this code to the purchaser or recipient of the cigarettes.

[Acts 1981, 67th Leg., p. 1651, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.206. Solicitor**

(a) A solicitor shall keep in this state a record of orders solicited and orders taken for cigarettes. The record must show:

- (1) the quantity and kind of cigarettes ordered or shipped;
- (2) the name of the person from whom the cigarettes were ordered or by whom the cigarettes are shipped;
- (3) the name and address of the purchaser;
- (4) the date the cigarettes were ordered; and
- (5) if available, the date the cigarettes were shipped.

(b) If a solicitor is given credit for or furnished records of an order or shipment shipped by the vendor the solicitor represents, the solicitor shall keep the record whether or not the solicitor took the order.

[Acts 1981, 67th Leg., p. 1651, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.207. Carrier**

(a) A common or contract carrier that transports cigarettes in this state shall keep a record in this state of cigarettes handled or transported. The record must show for each transaction:

- (1) the name of the consignor and consignee;
- (2) the date of delivery; and
- (3) the number or quantity of cigarettes transported or handled.

(b) The carrier shall keep the record required by this section, and all books or records in the custody of the carrier showing the shipment of cigarettes,

open at all times for inspection by the comptroller or the attorney general. The carrier shall allow the comptroller and the attorney general free access to books, records, and cigarettes in the carrier's custody.

[Acts 1981, 67th Leg., p. 1651, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.208. Distributing Agent

(a) A distributing agent shall keep at each place of business in this state a record of cigarettes received and a record of each distribution or delivery made by the distributing agent.

(b) The record of cigarettes received must include all:

- (1) invoices;
- (2) orders;
- (3) bills of lading;
- (4) waybills;
- (5) freight bills;
- (6) express receipts; and
- (7) shipping records furnished by the carrier and shipper.

(c) A distributing agent may use a copy of a record required by Subsection (b) of this section.

(d) The record of distribution or delivery must include all:

- (1) orders or copies of orders;
- (2) invoices or copies of invoices; and
- (3) shipping records furnished by the carrier and the person ordering the distribution or delivery.

[Acts 1981, 67th Leg., p. 1652, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.209. Availability of Records

(a) A person, other than a common carrier or a contract carrier, required by this subchapter to keep a record shall keep the record available at all times for two years for inspection by the comptroller and the attorney general.

(b) If a distributor's, wholesale dealer's, or retail dealer's place of business is a vending machine, train, or vehicle, the distributor, wholesale dealer, or retail dealer shall designate in the application for a permit a permanent place to keep the records. The distributor, wholesale dealer, or retail dealer shall keep the records in the designated place after the cigarettes are delivered from the vending machine, train, or vehicle.

[Acts 1981, 67th Leg., p. 1652, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.210. Distributor's Report

(a) A distributor shall deliver to the comptroller in Austin, on or before the 10th day of each month, a report for the preceding calendar month.

(b) The report must show:

- (1) the date the report was made;

- (2) the distributor's name and address;
- (3) the month the report covers;
- (4) the number of unstamped and the number of stamped cigarettes on hand at the beginning of the month;
- (5) the number of unstamped and the number of stamped cigarettes purchased and received during the month;
- (6) the number of unstamped and the number of stamped cigarettes returned by customers or received from any other source;
- (7) the number of unstamped and the number of stamped cigarettes sold, used, lost, stolen, returned to the factory, or disposed of in any other manner;
- (8) the number of unstamped and the number of stamped cigarettes on hand at the end of the month;
- (9) the number of cigarettes sold or distributed in interstate commerce;
- (10) the number of cigarettes sold or distributed in intrastate commerce;
- (11) the number, denomination, and face value of unused stamps on hand at the beginning of the month;
- (12) the number, denomination, and face value of stamps purchased and received;
- (13) the number, denomination, and face value of stamps sold, used, lost, stolen, exchanged, returned, or disposed of in any other manner;
- (14) the number, denomination, and face value of stamps on hand at the end of the month; and
- (15) all drop shipments handled by or through the distributor during the month, including the date of shipment, invoice number, name and address of the consignee, number and brand of cigarettes, and means of delivery.

(c) The distributor shall attach copies of invoices of drop shipments handled by or through the distributor during the month.

(d) The comptroller may furnish a form for the report, but a distributor's failure to obtain a form is not an excuse for failure to file a report.

[Acts 1981, 67th Leg., p. 1652, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.211. Solicitor's Report

(a) A solicitor shall file with the comptroller, on or before the fifth day of each month, a copy of each order solicited by him in this state during the preceding calendar month. The comptroller shall supply the forms.

(b) The copy must show:

- (1) the quantity and kind of cigarettes ordered;
- (2) the name of the person ordering the cigarettes;
- (3) the name of the person that the cigarettes were ordered from;
- (4) the name and address of the purchaser;
- (5) the date the cigarettes were ordered; and



(6) any other information the comptroller requires.

[Acts 1981, 67th Leg., p. 1653, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.212. Distributing Agent's Report**

(a) A distributing agent in this state shall report to the comptroller each day except Sundays and holidays all cigarette deliveries made by the distributing agent on the preceding day or days.

(b) The comptroller shall prescribe the form of the report, and the distributing agent shall furnish the form.

(c) The report must show:

- (1) the name of the person ordering the delivery;
- (2) the date of delivery;
- (3) the name and address of the person to whom delivered;
- (4) the invoice number;
- (5) the bill of lading or waybill number;
- (6) the number and kind of cigarettes delivered;
- (7) the means of delivery;
- (8) the transportation agent; and
- (9) the designation of drop shipment if a drop shipment.

(d) If the invoice furnished to the distributing agent by the manufacturer or person ordering the delivery or the bill of lading prepared by the distributing agent to cover the shipment under the invoice contains the information required by this section, a copy of each invoice or bill of lading may be sent to the comptroller instead of the report.

[Acts 1981, 67th Leg., p. 1653, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.213 to 154.300 reserved for expansion]

**SUBCHAPTER G. ADMINISTRATION BY COMPTROLLER AND TREASURER**

**§ 154.301. Audits**

(a) If a distributor fails to pay a tax or penalty in the proper manner when due as required by this chapter, the comptroller may employ a person to determine the amount due. If the distributor has not paid the tax or penalty, the distributor shall pay the reasonable expenses incurred for the investigation and audit as an additional penalty.

(b) The comptroller shall deposit funds paid in under this section to the credit of the general revenue fund.

[Acts 1981, 67th Leg., p. 1654, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.302. Payment of Double Amount**

(a) If the comptroller finds that a person has sold unstamped cigarettes, the comptroller may require

the person to pay the state through the comptroller a sum equal to twice the amount of stamp tax due.

(b) If the person does not furnish the comptroller evidence that enough stamps were purchased to cover unstamped cigarettes purchased, it is presumed that the cigarettes were sold without the proper stamps.

[Acts 1981, 67th Leg., p. 1654, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.303. Supervision of Stamp Procurement**

The director of the cigarette tax division shall:

- (1) direct the administration and enforcement of the provisions of this chapter;
- (2) supervise the printing and manufacturing of tax stamps under the contract as awarded by the State Purchasing and General Services Commission;
- (3) have possession and custody of, and be responsible for, specification plans, photographs, impressions, drawings, electroplates, printing stones, and any property that may provide a way to reproduce, manufacture, or print cigarette tax stamps in the design selected by the comptroller;
- (4) inspect the stamps after the manufacturing or printing;
- (5) reject and supervise the destruction of sheets of stamps that do not meet the specifications in the contract; and
- (6) have control of manufactured or printed stamps and be responsible for the stamps until the treasurer receives the stamps.

[Acts 1981, 67th Leg., p. 1654, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.304. Inspection**

(a) To determine the tax liability of a person dealing in cigarettes, the comptroller may:

- (1) inspect any premises where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange;
- (2) remain on the premises as long as necessary to determine the tax liability;
- (3) examine the records required by this chapter or records kept incident to the conduct of the cigarette business of the person dealing in cigarettes; and
- (4) examine stocks of cigarettes and cigarette stamps.

(b) A person dealing in cigarettes may not:

- (1) fail to produce, on the comptroller's demand, records required by this chapter; or
- (2) hinder or prevent the inspection of the required records or the examination of the premises.

[Acts 1981, 67th Leg., p. 1654, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.305. Refund for Damaged Stamps**

The treasurer may make rules providing for a refund for stamps that are unfit for sale or use because of damage.

[Acts 1981, 67th Leg., p. 1655, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.306. Exchange of Stamps**

(a) The treasurer may make rules providing for exchange or replacement without cost of stamps affixed to a package of cigarettes if the cigarettes have become unfit for use or consumption or unsalable.

(b) The treasurer may not exchange stamps under this section unless the treasurer is satisfied that the cigarettes are unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer.

[Acts 1981, 67th Leg., p. 1655, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.307. Records**

The treasurer shall keep a record of:

- (1) stamps sold by the treasurer or under the treasurer's direction;
- (2) stamps exchanged by the treasurer; and
- (3) refunds made on stamps purchased.

[Acts 1981, 67th Leg., p. 1655, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.308. Information Confidential**

(a) Information obtained by the attorney general or comptroller from a record, report, instrument, or copy of a record, report, or instrument required by this chapter is confidential and not open to public inspection, except as provided by Subsections (c), (d), and (e) of this section.

(b) Information obtained by the attorney general or comptroller during an examination of a taxpayer's books, records, papers, officers, employees, business affairs, operations, source of income, profits, losses, or expenditures is confidential and not open to public inspection, except as provided by Subsections (c) and (d) of this section.

(c) The comptroller or attorney general may use information obtained from an examination or obtained from a record, report, instrument, or copy of a record, report, or instrument to enforce the provisions of this chapter.

(d) The comptroller or attorney general may authorize examination by other officers and law enforcement officials of this state, or by tax officials of another state, or by officials of the federal government if a reciprocal arrangement exists.

(e) Information set forth in a lien filed under this title or in a permit issued under Section 154.101 or 154.102 of this code is not confidential.

[Acts 1981, 67th Leg., p. 1655, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.309 to 154.400 reserved for expansion]

## SUBCHAPTER H. ENFORCEMENT OF TAX

**§ 154.401. Evidence**

(a) In a suit to establish or collect a tax, penalty, and cost of audit from a distributor, the following types of reports are admissible in evidence and are prima facie evidence of their contents:

(1) a report filed with the comptroller by the distributor, or a copy of a report certified to by the comptroller or the comptroller's chief clerk, showing the number of cigarettes sold by the distributor on which a tax, penalty, and cost of audit have not been paid; or

(2) an audit made by the comptroller from the books or records of the distributor, or audit made by another person if signed and sworn to as being made from the records of the distributor or persons from whom the distributor has bought, received, or delivered cigarettes.

(b) The inaccuracy of the report or audit may be shown.

(c) If the attorney general files suit for taxes and attaches or files as an exhibit a report or audit and an affidavit of the comptroller that the taxes are unpaid and that all payments and credits have been allowed, unless the opposing party files an answer as required by Rule 185, Texas Rules of Civil Procedure, the audit or report shall be taken as prima facie evidence of the amount owed. Rule 185, Texas Rules of Civil Procedure, applies to suits to collect taxes under this chapter.

[Acts 1981, 67th Leg., p. 1656, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.402. Venue**

A civil suit filed under this chapter may be brought in Travis County or in the county of the defendant's domicile.

[Acts 1981, 67th Leg., p. 1656, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.403. Seizure**

(a) The comptroller with or without process may seize:

(1) cigarettes taxed under this chapter that are possessed or controlled by a person for the purpose of selling or removing the cigarettes in violation of this chapter;

(2) cigarettes that are removed, deposited, or concealed by a person intending to avoid payment of taxes imposed by this chapter;

(3) an automobile, boat, conveyance, or other type of vehicle used to remove or transport cigarettes by a person intending to avoid payment of taxes imposed by this chapter; and

(4) equipment, paraphernalia, or other tangible personal property used by a person intending to

avoid payment of taxes imposed by this chapter found in the place where the cigarettes are found.

(b) An item seized under this section is forfeited to the state and remains in the custody of the comptroller, sheriff, or other officer for disposition as provided by this chapter. The seized item is not subject to replevin.

[Acts 1981, 67th Leg., p. 1656, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.404. Comptroller's Report**

(a) If the comptroller seizes property under Section 154.403 of this code, the comptroller shall immediately make a written report showing:

- (1) the name of the person making the seizure;
- (2) the place where the property was seized;
- (3) the person from whom the property was seized;
- (4) an inventory; and
- (5) an appraisal showing ordinary retail price of the items seized.

(b) The comptroller shall prepare the report in duplicate. The person who seized the property shall sign the report. The comptroller shall give the original to the person from whom the property was seized and shall file a duplicate copy open for public inspection in the comptroller's office.

[Acts 1981, 67th Leg., p. 1656, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.405. Forfeiture Proceeding**

(a) At the comptroller's request, the attorney general or the district or county attorney of the county where the seizure occurred shall file an in rem proceeding in a court of competent jurisdiction in the county of seizure. The state is the plaintiff, and the owner or person in possession of the seized property is defendant. If the owner or possessor is unknown, the seized property is the defendant.

(b) After the suit is filed, the clerk of the court shall notify the owner or person in possession to appear before the court on a named date to show cause why the property should not be forfeited. The date of appearance may not be set for less than two days after the date of service of the notice. The notice shall be served by the sheriff of the county.

(c) On the comptroller's affidavit that the defendant is a nonresident, that the defendant's residence is unknown, or that the defendant's name is unknown, notice or process shall be served or published in the manner provided by law for service on nonresidents or unknown defendants. The hearing may not be held before the expiration of 10 days after the date of service or the first publication of the notice. The court shall appoint an attorney to represent the nonresident or unknown defendant. The attorney has the rights, duties, and compensation as provided by law for an attorney appointed to

represent a nonresident defendant or an unknown defendant.

[Acts 1981, 67th Leg., p. 1657, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.406. Sale by Sheriff**

(a) If a court renders final judgment maintaining a seizure and declaring a forfeiture as provided by Section 154.405 of this code, the court shall order that the sheriff sell the property to the highest bidder at public auction in the county of seizure. The sheriff shall give 10 days' notice of the sale by advertising at least twice in a legal publication in the county.

(b) The sheriff shall send the sale proceeds, less expenses of seizure and court costs, to the state treasury. The net proceeds are allocated as provided by Subchapter J of this chapter.<sup>1</sup>

(c) If the district or county attorney files and prosecutes a case under Section 154.405 of this code, a fee of \$15 shall be paid to the official in addition to other fees allowed by law. The fee is collected as court costs out of the sale proceeds.

[Acts 1981, 67th Leg., p. 1657, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 154.601 et seq.

**§ 154.407. Sale by Comptroller**

In lieu of the forfeiture proceeding provided by Section 154.405 of this code, the comptroller may sell seized property through the summary proceeding provided by Section 154.408 of this code if the property appears by the report or receipt of the officer seizing it to have an appraised value of \$500 or less.

[Acts 1981, 67th Leg., p. 1657, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.408. Summary Proceeding**

(a) The comptroller shall publish a notice in a newspaper in the county where the seizure was made. The notice must:

- (1) give a description of the property;
- (2) state the time and place of seizure;
- (3) state the cause of seizure; and
- (4) require a person claiming an interest in the property to appear and make a claim within 15 days after the date of publication.

(b) A person claiming an interest in seized property may:

- (1) file a timely claim with the comptroller stating the person's interest in the property; and
- (2) execute a bond to the state in the amount of \$250 with sureties approved by the comptroller conditioned on the person paying the cost of the forfeiture proceeding if forfeiture is established.

(c) If the comptroller receives the bond provided for in this section, the comptroller shall send the bond with a certified copy of the report or receipt of the property seized as provided by Section 154.404

of this code to the attorney general or the county or district attorney of the county of seizure. The attorney general or county or district attorney shall file and prosecute forfeiture proceedings as provided by Section 154.405 of this code.

(d) If no person files a timely claim and executes a bond, the comptroller shall:

(1) give 10 days' notice of the sale of the seized property by publishing notice twice in a newspaper in the county of seizure;

(2) sell the seized property at the time and place specified in the notice at public auction; and

(3) after deducting the cost of seizure, appraisal, custody, and sale, deposit the proceeds in the state treasury to be allocated as provided by Subchapter J of this chapter.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1657, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 154.601 et seq.

#### § 154.409. Unstamped Cigarettes

If cigarettes seized under Section 154.403 of this code are unstamped, an officer selling the cigarettes shall affix the required stamps to the cigarettes and deduct the cost of the stamps from the sale proceeds.

[Acts 1981, 67th Leg., p. 1658, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.410. Seizure or Sale No Defense

The seizure, forfeiture, and sale of cigarettes or property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter.

[Acts 1981, 67th Leg., p. 1658, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.411. Waiver Permitted

(a) The comptroller may waive a forfeiture proceeding for property seized under Section 154.403 of this code if the owner or possessor of the property:

(1) affixes the required stamp to the individual packages of cigarettes; and

(2) in addition to the value of the stamps required to be affixed, pays to the state through the comptroller a sum equal to the value of the required stamps.

(b) The comptroller may make a compromise with a person before or after a claim is filed in court. The comptroller shall keep a record open for public inspection of compromises and waivers of forfeiture made under this section.

[Acts 1981, 67th Leg., p. 1658, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.412. Payment to Treasury

The comptroller shall deposit money collected under Section 154.411, after payment of costs and

commissions, in the treasury to be allocated as provided by Subchapter J of this chapter.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1658, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 154.601 et seq.

#### § 154.413. State Tax Lien

Taxes, penalties, and costs of auditing as provided in Section 154.301 of this code that a distributor owes this state are a preferred lien, first and prior to other existing liens, contract or statutory, legal or equitable, on all property of the distributor used in the distributor's business.

[Acts 1981, 67th Leg., p. 1659, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.414. Property Included

Property subject to the lien provided for in Section 154.413 of this code includes:

- (1) manufacturing plants;
- (2) storage plants;
- (3) warehouses;
- (4) office buildings and equipment;
- (5) motor vehicles or equipment used as a vehicle;
- (6) each tract of land on which a manufacturing plant, storage plant, warehouse, office building, or other property is located;
- (7) tangible property that is used to carry on the distributor's business; and
- (8) the distributor's cigarettes and stamps.

[Acts 1981, 67th Leg., p. 1659, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.415 to 154.500 reserved for expansion]

### SUBCHAPTER I. PENALTIES

#### § 154.501. Penalties

(a) A person violates this chapter if the person:

(1) is a distributor, wholesale dealer, retail dealer, or distributing agent and fails to keep records required by this chapter;

(2) is a distributor, wholesale dealer, or retail dealer and sells cigarettes taxed under this chapter without a valid permit;

(3) is a distributor, wholesale dealer, or distributing agent and fails to make a report or makes a false or incomplete report required by this chapter to the comptroller;

(4) is a distributing agent and stores, distributes, or delivers unstamped cigarettes in this state without a valid permit; or

(5) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule made by the comptroller under this chapter.

(b) A person who violates this section forfeits and shall pay to the state a penalty of not less than \$25 nor more than \$500.

(c) Each day on which a violation occurs is a separate offense.

(d) The attorney general shall bring suits to recover penalties under this section.

(e) A suit under this section may be brought in a court of competent jurisdiction in Travis County or in any court having jurisdiction.

[Acts 1981, 67th Leg., p. 1659, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.502. **Unstamped Cigarettes**

A person commits an offense if the person:

- (1) makes a first sale of unstamped cigarettes;
- (2) sells, offers for sale, or presents as a prize or gift unstamped cigarettes; or
- (3) knowingly consumes, uses, or smokes cigarettes taxed under this chapter without a stamp affixed to each individual package.

[Acts 1981, 67th Leg., p. 1659, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.503. **Possession in Quantities Less Than 10,000**

(a) Except as provided by Section 154.042 of this code, a person commits an offense if the person possesses unstamped cigarettes in quantities less than 10,000.

(b) This section does not prohibit transportation of cigarettes by a common carrier.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.504. **Possession of Quantities Less Than Individual Package**

A person commits an offense if the person sells cigarettes in quantities less than an individual package.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.505. **Cancellation of Stamp**

A person commits an offense if the person knowingly cancels or mutilates, with fraudulent intent or to conceal a violation of this chapter, a stamp affixed to an individual package of cigarettes.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.506. **Concealment of a Violation**

A person commits an offense if the person uses any artful device or deceptive practice to conceal a violation of this chapter.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.507. **Misleading the Comptroller**

A person commits an offense if the person misleads the comptroller in the enforcement of this chapter.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.508. **Refusing to Surrender Cigarettes**

A person commits an offense if the person refuses to surrender to the comptroller on demand cigarettes possessed in violation of this chapter.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.509. **Permits**

A person commits an offense if the person:

- (1) as a distributor or representative of a distributor, makes a first sale without having a valid permit;
- (2) as a distributor or representative of a distributor, makes a first sale without having a permit posted where it can be easily seen by the public;
- (3) as a distributor, wholesale dealer, or agent of a distributor or wholesale dealer, does not deliver an invoice required by Section 154.203 of this code to the purchaser;
- (4) as a wholesale dealer, retail dealer, or agent of a wholesale dealer or retail dealer, sells cigarettes without having a valid permit;
- (5) as a wholesale dealer, retail dealer, or agent of a wholesale dealer or retail dealer, sells cigarettes without having a permit posted where it can be easily seen by the public;
- (6) as a distributing agent, stores or distributes unstamped cigarettes without having a valid permit; or
- (7) offers for sale or solicits an order in this state for cigarettes to be shipped to a place in this state without having a valid solicitor's permit.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.510. **Misdemeanor**

An offense under Sections 154.502 through 154.509 of this code is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1981, 67th Leg., p. 1660, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 154.511. **Transportation of Cigarettes**

A person, other than a common carrier, commits an offense if the person:

- (1) knowingly transports more than 200 cigarettes without a stamp affixed to each individual package;
- (2) wilfully refuses to stop a motor vehicle operated to transport cigarettes after a request to stop from an authorized person; or

(3) while transporting cigarettes refuses to permit a complete inspection of the cargo by an authorized person.

[Acts 1981, 67th Leg., p. 1661, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.512. Inspection of Premises

A person commits an offense if the person refuses to permit a complete inspection by an authorized person of any premises where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange.

[Acts 1981, 67th Leg., p. 1661, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.513. Previously Used or Old Design Stamps

A person commits an offense if the person:

(1) uses, sells, offers for sale, or possesses for use or sale previously used stamps;

(2) attaches or causes to be attached a previously used stamp to an individual package of cigarettes;

(3) uses or consents to the use of previously used stamps in connection with the sale or offering for sale of cigarettes; or

(4) sells, offers for sale, or possesses stamps of an old design more than 60 days after the date of issue of a new design of stamps.

[Acts 1981, 67th Leg., p. 1661, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.514. Sale of Stamps

A person commits an offense if the person, without having the requisition from the comptroller as provided by Section 154.044 of this code:

(1) purchases stamps from a person other than the treasurer; or

(2) sells lawfully issued stamps to a person other than the treasurer.

[Acts 1981, 67th Leg., p. 1661, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.515. Possession in Quantities of 10,000 or More

(a) Except as provided by Section 154.042 of this code, a person commits an offense if the person possesses unstamped cigarettes in quantities of 10,000 or more.

(b) This section does not prohibit transportation of cigarettes by a common carrier.

[Acts 1981, 67th Leg., p. 1661, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.516. Books and Records

A person commits an offense if the person:

(1) as a distributor, distributing agent, or agent of a distributor or distributing agent, knowingly makes, delivers to, and files with the comptroller

a false return or report or an incomplete return or report;

(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

(3) as a distributor, wholesale dealer, retail dealer, distributing agent, or the agent of a distributor, wholesale dealer, retail dealer, or distributing agent, destroys, mutilates, or conceals a book or record required by this chapter;

(4) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required to be kept by this chapter or that are incidental to the conduct of the cigarette business and may be kept;

(5) knowingly makes a false entry or fails to make entries in the books and records required by this chapter to be kept by a distributor, wholesale dealer, retail dealer, or distributing agent; or

(6) fails to keep for two years in this state books and records required by this chapter to be kept by a distributor, wholesale dealer, retail dealer, or distributing agent.

[Acts 1981, 67th Leg., p. 1661, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.517. Felony

An offense under Sections 154.511 through 154.516 of this code is a felony punishable by:

(1) confinement in the state penitentiary for not more than two years or in the county jail for not less than one month nor more than six months;

(2) a fine of not less than \$100 nor more than \$5,000; or

(3) both fine and confinement.

[Acts 1981, 67th Leg., p. 1662, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.518. Overlap of Penalties

If an offense is punishable under Section 154.510 of this code and also under Section 154.517 of this code, the punishment prescribed by Section 154.517 of this code controls.

[Acts 1981, 67th Leg., p. 1662, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.519. Venue

Venue of a prosecution for an offense punishable under Section 154.510 or 154.517 of this code is in Travis County or in the county where the offense occurred.

[Acts 1981, 67th Leg., p. 1662, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 154.520. Counterfeit Stamps

(a) A person commits an offense if the person:

(1) prints, engraves, makes, issues, sells, or circulates counterfeit stamps;

(2) possesses with intent to use, sell, circulate, or pass a counterfeit stamp;

(3) uses or consents to the use of a counterfeit stamp in the sale or offering for sale of cigarettes; or

(4) places or causes to be placed a counterfeit stamp on an individual package of cigarettes.

(b) An offense under this section is a felony punishable by confinement in the state penitentiary for not less than 2 years nor more than 20 years.

(c) Venue of a prosecution under this section is in Travis County.

[Acts 1981, 67th Leg., p. 1662, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 154.521. Disclosure of Records**

(a) An employee of the attorney general or the comptroller commits an offense if the employee:

(1) gives a person information obtained from the examination of books or records as provided for by Section 154.301 or 154.304 of this code;

(2) permits a person to inspect records, reports, or copies of records or reports required by this chapter;

(3) gives a person a copy of a record or report required by this chapter; or

(4) gives a person information about a record or report.

(b) An offense under this section is a Class B misdemeanor.

(c) It is an exception to the offense defined by this section that the employee of the attorney general or the comptroller furnished information as authorized by Section 154.308 of this code.

[Acts 1981, 67th Leg., p. 1662, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 154.522 to 154.600 reserved for expansion]

**SUBCHAPTER J. NATURE OF TAX AND DISPOSITION OF FUNDS**

**§ 154.601. Nature of Tax**

(a) The tax imposed by this chapter is not an occupation tax.

(b) If a court of competent jurisdiction declares the tax imposed by this chapter to be an occupation tax:

(1) the legislature intends that the holding not affect the validity of the remaining provisions of this chapter; and

(2) the net revenue is allocated to the general revenue fund, except that one-fourth of the net revenue shall be transferred from the general revenue fund to the available school fund.

(c) A tax imposed by this chapter is in lieu of any other occupation or excise tax imposed by the state or a political subdivision of the state on cigarettes.

[Acts 1981, 67th Leg., p. 1663, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2777, ch. 752, § 9(d), eff. Jan. 1, 1982.]

**§ 154.602. Enforcement Fund**

(a) The legislature may appropriate money for manufacturing and printing of cigarette tax stamps. Amounts appropriated under this section shall be taken from revenue received from the cigarette tax before the revenue is allocated.

(b) An enforcement fund is established in the state treasury to be used by the comptroller for the administration and enforcement of this chapter subject to appropriation by the legislature in the General Appropriations Act.

(c) The comptroller shall deposit to the credit of the enforcement fund 1.875 percent of:

(1) the first \$2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand; and

(2) the first \$4.10 of tax received per 1,000 cigarettes for cigarettes weighing more than three pounds per thousand.

(d) At the end of each biennium, any unexpended portion of the fund is allocated as provided by Section 154.603 of this code.

[Acts 1981, 67th Leg., p. 1663, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2776, ch. 752, § 9(c), eff. Jan. 1, 1982.]

**§ 154.603. Disposition of Revenue**

(a) After the deduction for the enforcement fund, the revenue remaining of the first \$2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per thousand and the first \$4.10 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand is allocated:

(1) 18.75 percent to the available school fund; and

(2) 81.25 percent to the general revenue fund.

*Text of subsection (b) effective until September 1, 1985*

(b) The revenue remaining after deduction for the enforcement fund and allocation under Subsection (a) of this section is allocated:

(1) 50 cents per 1,000 cigarettes to the state parks fund;

(2) 50 cents per 1,000 cigarettes to the local parks, recreation and open space fund (this allocation expires on August 31, 1983); and

(3) the remainder to the general revenue fund.

*Text of subsection (b) effective September 1, 1985*

(b) The revenue remaining after deduction for the enforcement fund and allocation under Subsection (a) of this section is allocated:

(1) 50 cents per 1,000 cigarettes to the state parks fund;

(2) 50 cents per 1,000 cigarettes to the local parks, recreation and open space fund; and

(3) the remainder to the general revenue fund.

(c) The Parks and Wildlife Department may use the money allocated under Subsection (b)(1) of this section to plan, develop, acquire, maintain, and operate state parks and historic sites. The department may not use more than 25 percent of the revenue credited to the state parks fund under Subsection (b)(1) to operate and maintain state parks and historic sites.

(d) Revenues allocated under Subsection (b) of this section shall be credited to the general revenue fund and then transferred from the general revenue fund to the appropriate funds as designated in Subsection (b) of this section.

[Acts 1981, 67th Leg., p. 1663, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2776, ch. 752, § 9(b), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 2025, ch. 367, § 6, eff. Sept. 1, 1985.]

**Amendment by Acts 1981, 67th Leg., p. 2450, ch. 630, § 3**

*Section 3 of Acts 1981, 67th Leg., p. 2450, ch. 630, § 3, purports to amend Taxation—General, art. 7.06 [now, §§ 154.021, 154.022, 154.024, 154.041, 154.043, and this section], by adding subd. (4), without reference to repeal of said article by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(a). As so added, subd. (4) reads:*

*“(a) For the period beginning on September 1, 1981, and extending through August 31, 1983, only, three cents of the tax allocated under Section (3)(b) of this Article on each 1,000 cigarettes shall be credited to a special fund in the State Treasury called the Sesquicentennial Museum Fund. Provided, no portion of the revenues allocated under this Section shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the revenues allocated under this Section may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this Section, the said revenues shall be credited to the Sesquicentennial Museum Fund except that the revenues allocated under this Section during the month of August of each year shall be credited to the Sesquicentennial Museum Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this Section shall remain or be distributed under the provisions governing the said Clearance Fund.*

*“(b) The remaining net revenue derived from the tax levied under this Article after allocating the amounts specified in Subsection (a) of this Section shall be*

*credited to the General Fund of this State. Provided, no portion of the revenues allocated under this Subsection shall be set aside to any fund for the administration and enforcement of the cigarette tax law of this State. Provided, further, the revenues allocated under this Subsection may be credited daily to the Omnibus Clearance Fund hereafter referred to in this Act and on the first day of each month following the collection of the revenues allocated under this Subsection, the said revenues shall be credited to the General Fund, except that the revenues allocated under this Subsection during the month of August of each year shall be credited to the General Fund on the thirty-first day of August of each year; it being specifically understood that no portion of the said revenues allocated under this Subsection shall remain or be distributed under the provisions governing the said Clearance Fund.”*

*Section 3.11(c) of the Code Construction Act (Civil Statutes, art. 5429b-2) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.*

**CHAPTER 155. CIGARS AND TOBACCO PRODUCTS TAX**

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SUBCHAPTER H. ALLOCATION OF TAX

- Sec.  
 155.241. Allocation of Tax.

SUBCHAPTER A. GENERAL PROVISIONS

§ 155.001. Definitions

In this chapter:

(1) "Cigar" means a roll of fermented tobacco wrapped in tobacco. The main stream of smoke from a cigar produces an alkaline reaction to litmus paper. The main stream of smoke from a cigarette produces an acid reaction to litmus paper.

(2) "Cigar containing a substantial amount of nontobacco ingredients" means a cigar that contains sheet binder, sheet wrapper, sheet filler, or a combination of sheet binder, sheet wrapper, or sheet filler.

(3) "Tobacco product" means:

- (A) a cigar;
- (B) a cheroot;
- (C) a stogie;

(D) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(E) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing; or

(F) an article or product made of tobacco or a tobacco substitute, but does not include snuff or a cigarette.

(4) "First sale" means:

(A) the first sale or distribution in intrastate commerce in this state; or

(B) the first use or consumption in this state.

(5) "Drop shipment" means a delivery of cigars or tobacco products received by a person in this state if payment for the cigars or tobacco products is made to the shipper, seller, or buyer or by a person other than the consignee.

(6) "Consumer" means a person who possesses tobacco products to consume or dispose of them.

(7) "Distributor" means a person who:

(A) engages in the business of selling tobacco products in this state and brings, or causes to be brought, into this state from outside this state tobacco products for sale, use, or consumption; or

(B) manufactures tobacco products in this state for sale, use, or consumption in this state.

(8) "Wholesale dealer" means a person:

(A) whose principal business is that of a wholesale dealer or jobber;

(B) who is known to the trade as a wholesale dealer or jobber; and

(C) who sells cigars or tobacco products to licensed retailers for resale, gives away cigars or tobacco products, or displays cigars or tobacco products so that a retailer may acquire them.

(9) "Retailer" means a dealer other than a wholesale dealer:

(A) whose principal business is selling merchandise at retail; and

(B) who sells or offers for sale cigars or tobacco products, gives away cigars or tobacco products, or displays cigars or tobacco products so that a consumer may acquire them.

(10) "Solicitor" means a person who:

(A) represents a licensed nonresident supplier; and

(B) solicits or takes orders for tobacco products to be shipped in interstate commerce to a licensed distributor in this state.

(11) "Distributing agent" means a person in this state who is an agent of a person outside this state, receives cigars and tobacco products in interstate commerce, and stores the cigars and tobacco products for distribution or delivery to distributors, wholesale dealers, retailers, or consumers on orders from the person outside this state.

(12) "Dealer" means a person who:

(A) manufactures cigars or tobacco products for distribution, sale, use, or consumption in this state; or

(B) imports cigars or tobacco products from outside this state for distribution, sale, use, or consumption in this state.

(13) "Retail price" means the ordinary price paid by the consumer for individual cigars or tobacco products before adding the tax.

[Acts 1981, 67th Leg., p. 1666, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.002 to 155.020 reserved  
for expansion]

#### SUBCHAPTER B. IMPOSITION AND RATE OF TAX

##### § 155.021. Tax Imposed

(a) A tax is imposed on each person who makes a first sale of cigars or tobacco products.

(b) The tax rates are:

(1) one cent per 10 or fraction of 10 on cigars weighing three pounds or less per thousand;

(2) \$7.50 per thousand on cigars that:

(A) weigh more than three pounds per thousand; and

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(3) \$11 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain no substantial amount of nontobacco ingredients;

(4) \$15 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain a substantial amount of nontobacco ingredients; and

(5) 25 percent of the factory list price, exclusive of any trade discount, special discount, or deal, on chewing tobacco and smoking tobacco.

(c) Cigars taxed under Subsections (b)(3) and (b)(4) of this section are presumed to contain a substantial amount of nontobacco ingredients unless the report on the cigars required by Section 155.111 of this code is accompanied by an affidavit stating that specific cigars described in the report do not contain sheet wrapper, sheet binder, or sheet filler. If the manufacturer prepares the report, the manufacturer shall make the affidavit. If the distributor prepares the report, the manufacturer and the distributor shall make the affidavit.

[Acts 1981, 67th Leg., p. 1667, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.022. First Sale

(a) A person making a first sale of cigars or tobacco products in this state shall pay the tax to the treasurer.

(b) At the time of a first sale of cigars or tobacco products in this state, the person making the first sale shall collect the tax from the purchaser or recipient in addition to the selling price.

(c) In each subsequent sale or distribution, the tax shall be added to the selling price so that the tax is ultimately paid by the person using or consuming the cigars or tobacco products in this state.

[Acts 1981, 67th Leg., p. 1668, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.023. Payment of Tax

A distributor shall pay the tax on cigars and tobacco products sold, used, or disposed of during the preceding month at the same time the distributor files the report required by Section 155.111 of this code. A distributor shall pay in legal tender, money order, or exchange made payable to the treasurer.

[Acts 1981, 67th Leg., p. 1668, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.024. Exception for Personal Use

A person who personally transports cigars or tobacco products in quantities or amounts that would ordinarily retail at 25 cents or less is not required to pay the tax imposed by this chapter if the person uses the cigars or tobacco products and does not sell them or offer them for sale.

[Acts 1981, 67th Leg., p. 1662, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.025. Selling Only From a Vending Machine**

No occupation tax shall be collected from a person for the privilege of selling tobacco products only from a vending machine other than the permit fee required by this chapter.

[Acts 1981, 67th Leg., p. 1668, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.026. Penalty for Failure to Pay Tax**

(a) A distributor who fails to file a report as required by this chapter or pay the tax when due forfeits five percent of the amount due as a penalty, and if the distributor fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the distributor forfeits an additional five percent.

(b) The minimum penalty imposed by this section is \$1.

[Acts 1981, 67th Leg., p. 1669, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 451, ch. 93, § 3, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

**§ 155.027. Venue**

Venue of a suit for collection of a penalty for late payment of taxes is in Travis County.

[Acts 1981, 67th Leg., p. 1669, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.028 to 155.040 reserved for expansion]

**SUBCHAPTER C. PERMITS**

**§ 155.041. Permits**

(a) A person may not engage in business as a distributor, wholesale dealer, or retailer unless the person has applied for and received the applicable permit from the comptroller.

(b) A distributor, wholesale dealer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesale dealer, or retailer.

(c) The comptroller shall furnish the application form for the permit if the applicant makes a written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(d) The application must include:

(1) a description of the manner in which the applicant transacts or intends to transact business;

(2) the address of the principal office, residence, and place of business for which the permit applies;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses, not to exceed three; and

(4) any other information the comptroller requests.

[Acts 1981, 67th Leg., p. 1669, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.042. Solicitor's Permit**

(a) A person may not engage in business as a solicitor unless the person has applied for and received a permit from the comptroller.

(b) A solicitor's permit must set forth the names and addresses of the vendors and employers that the solicitor represents. The solicitor may not represent a vendor or employer whose name is not on the permit.

[Acts 1981, 67th Leg., p. 1669, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.043. Distributing Agent's Permit**

(a) A person may not engage in business as a distributing agent unless the person has applied for and received a distributing agent's permit from the comptroller.

(b) The comptroller shall furnish the application form for the permit if the applicant makes a written request. The applicant has an excuse for failure to file if the applicant can show that the comptroller refused to furnish a form.

(c) The application must include:

(1) the name under which the distributing agent will do business;

(2) the address of the principal office and place of business in this state to which the permit applies;

(3) if the applicant is not an individual, the principal officers' or members' names and addresses; and

(4) any other information the comptroller requests.

(d) A distributing agent shall obtain a permit for each place of business owned or operated by the distributing agent.

[Acts 1981, 67th Leg., p. 1669, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.044. Issuance of Distributing Agent's Permit**

(a) The comptroller shall issue a permit to a distributing agent for a designated place of business if the comptroller has received the application and fee.

(b) The permits are nonassignable and consecutively numbered.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.045. Joint Permit

The comptroller may issue a joint permit for cigarettes and tobacco products to a distributor, wholesale dealer, retailer, or distributing agent. A person who receives a joint permit pays only one permit fee.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.046. Forms

The comptroller shall prescribe the form for the application for a permit to be a distributor, wholesale dealer, retailer, or distributing agent.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.047. Exception for Personal Use

If a distributor acquires tobacco products for personal use or consumption and not for sale, gift, or other disposition:

(1) the distributor is not required to have a distributor's permit, but shall comply with all other provisions of this chapter; and

(2) the comptroller may accept payment of the tax from the distributor.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.048. Issuance of Permits

(a) The comptroller shall issue a permit to a distributor, wholesale dealer, or retailer if the comptroller has received the application and fee.

(b) The permit shall be issued for a designated place of business.

(c) The permits are nonassignable and shall be consecutively numbered. The permit must show the kind of permit and authorize the sale of tobacco products in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or reasonable rules of the comptroller are violated.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.049. Licensing Year; Fees

(a) A permit required by this chapter expires on the last day of February of each year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

- (1) \$100 for a distributing agent's permit;
- (2) \$25 for a distributor's permit;
- (3) \$15 for a wholesale dealer's permit;
- (4) \$5 for a retailer's permit; and

(5) \$1 for a solicitor's permit.

(c) The comptroller shall prorate the fee for a new permit required by Section 155.041 or 155.043 of this code by allowing a discount computed by quarters of the licensing year.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.050. Payment for Permits

(a) An applicant for a permit required by Section 155.041 of this code shall send the fee with the application. Payment must be in cash, postal or express money order, or check.

(b) A permit issued in exchange for a personal check is conditioned on final payment of the check. After giving five days' notice to the holder that the bank on which the check is drawn has refused payment, the comptroller may revoke a permit. A revoked permit is subject to recall and seizure by the comptroller. If the comptroller receives funds to redeem the dishonored check, the comptroller may reinstate the permit.

[Acts 1981, 67th Leg., p. 1671, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.051. Additional Fees

(a) A person who is required by Section 155.041 or 155.043 of this code to have a permit and who does not obtain a renewal permit before the beginning of the licensing year shall pay a late application fee of \$1 to the comptroller at the time the person pays the permit fee.

(b) If the comptroller must visit a permit holder to collect a permit fee due under this chapter, the permit holder shall pay a service fee of \$5 in addition to the permit fee.

[Acts 1981, 67th Leg., p. 1671, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.052. Permit Required

(a) If a permit issued under this chapter is revoked or suspended, the person may not sell tobacco products from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(b) Except at the comptroller's discretion, if a permit is revoked the person may not receive a new permit within one year after the date of revocation.

[Acts 1981, 67th Leg., p. 1671, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.053. Display of Permit

(a) A person who has a permit required by Section 155.041 of this code shall keep the permit on public display at the place of business of the person to whom it is issued.

(b) If the permit is assigned to a tobacco products vending machine, the person shall publicly display the permit on the machine so that all the information may be read.

(c) If the permit is assigned to a train, the person shall post the permit in the car where tobacco products are displayed or offered for sale.

(d) If the permit is assigned to a vehicle, the person shall post the permit in a conspicuous place in the vehicle.

[Acts 1981, 67th Leg., p. 1671, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.054. Additional Permits**

(a) If a person operates as a distributor and a wholesale dealer in the same place of business, the person shall obtain only a distributor's permit for the place of business.

(b) If a distributor or wholesale dealer sells tobacco products at wholesale and retail, the distributor or wholesale dealer shall obtain a retailer's permit in addition to the distributor's permit or wholesale dealer's permit.

[Acts 1981, 67th Leg., p. 1671, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.055. Unexpired Permit**

A person who has an unexpired permit required by Section 155.041 of this code may return the permit to the comptroller for credit on the unexpired portion for the purchase of a permit of a higher classification.

[Acts 1981, 67th Leg., p. 1671, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.056. Vending Machine, Train, Boat, Airplane, Vehicle**

If a distributor, wholesale dealer, or retailer applies for a permit to sell tobacco products from a vending machine, train, boat, airplane, or vehicle, the applicant must show on the application:

- (1) the serial number of the vending machine;
- (2) the make, motor number, and license number of the vehicle;
- (3) the name of the airplane;
- (4) the name of the boat; or
- (5) the number of the train and the name of the railway company.

[Acts 1981, 67th Leg., p. 1672, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.057. Vending Machine With Cigarette Dealer's Permit**

If a person has a cigarette dealer's permit for a vending machine, a tobacco products permit for the machine is not required. The record required by Section 155.109 of this code must show that the person has a cigarette dealer's permit.

[Acts 1981, 67th Leg., p. 1672, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.058. Revenue**

Revenue from the sale of permits to distributors, wholesale dealers, and retailers is allocated in the

same manner that other revenue is allocated by Subchapter H of this chapter.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1672, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 155.241.

**§ 155.059. Revocation of Distributor's, Wholesale Dealer's, or Retailer's Permit**

(a) The comptroller may revoke or suspend a distributor's, wholesale dealer's, or retailer's permit if the distributor, wholesale dealer, or retailer has violated a provision of this chapter or a rule made under this chapter.

(b) The comptroller shall revoke or suspend a distributor's permit if the distributor:

- (1) fails or refuses to file a new or additional bond within 10 days after the date of the comptroller's demand as required by Section 155.062 of this code;
- (2) fails to file an acceptable new bond within 15 days after the date of the notice from the comptroller required by Section 155.063 of this code; or
- (3) fails or refuses to file reports and remit or pay the tax at the intervals fixed by the comptroller.

(c) The comptroller shall give written notice stating the reason for the revocation or suspension. The comptroller may mail the notice to the place designated on the application for a permit as the place of business.

[Acts 1981, 67th Leg., p. 1672, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.060. Revocation of Solicitor's Permit**

If a solicitor fails to comply with the provisions of this chapter, the comptroller, after giving the solicitor notice and an opportunity to be heard, may revoke the permit.

[Acts 1981, 67th Leg., p. 1672, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.061. Bond**

(a) A distributor shall file with the application for a permit a bond that:

- (1) is conditioned on full, complete, and faithful performance of all conditions and requirements imposed by this chapter or by rules made by the comptroller; and
- (2) guarantees timely payment of taxes, penalty, interest, and costs.

(b) The comptroller shall set the amount of the bond for at least three times the amount of tax that may be expected to accrue during a month, but the minimum amount is \$1,000.

(c) The bond must:

- (1) be executed by a corporate surety authorized to do business in this state;
- (2) be payable to the state; and

(3) remain in force for one year after its effective date unless released by the comptroller.

(d) A bond that is continuous in form may be continued in effect by a renewal certificate acceptable to the comptroller. If a renewal certificate is issued, it has the force and effect of an original bond.

[Acts 1981, 67th Leg., p. 1672, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.062. Insufficient Bond

(a) The comptroller may require an additional or a new bond if an existing bond becomes insufficient or a surety becomes unsatisfactory. An existing bond is not invalidated by the filing of a new bond, the cancellation or suspension of a permit, or a recovery on any bond.

(b) The comptroller may require the filing of reports and payment of tax at intervals shorter than one month if the comptroller believes that an existing bond is insufficient.

[Acts 1981, 67th Leg., p. 1673, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.063. Release of Surety

(a) If a surety files a written request with the comptroller in Austin to be released from liability on a bond, the surety shall be released from liability accruing more than 30 days after the date of the filing of the request. The surety is not released from liability accruing before the 30-day period expires.

(b) The comptroller, on receipt of the request, shall notify the person in whose behalf a bond was filed that the request has been received.

[Acts 1981, 67th Leg., p. 1673, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.064. Cash or Securities

(a) Instead of filing the bond required by Section 155.061 of this code, an applicant may deposit:

- (1) cash in the amount of the required bond in the suspense account of the treasury; or
- (2) securities with a par value equal to the amount of the required bond and of a class in which funds of The University of Texas may be legally invested.

(b) Cash or securities deposited under this section shall be released within 60 days after the date of cancellation or surrender of a permit held by the person in whose behalf they were deposited if the comptroller clears the person of tax liability.

(c) If the state secures a judgment in an action against a person in whose behalf cash or securities were deposited and recovers any tax, costs, penalty, or interest, the comptroller may withdraw or use the cash or sell the securities and use the proceeds to satisfy the judgment.

(d) A person may acknowledge in writing the correctness of the state's claim for tax, costs, penal-

ty, or interest and may authorize the use of the cash or the proceeds from the sale of the securities to pay on or pay off the claim without a suit being filed.

(e) Suit may be filed against any surety on any bond furnished by a distributor without resorting to or exhausting the assets of the distributor or making the distributor, as principal obligor to the bond, a party to the suit.

[Acts 1981, 67th Leg., p. 1673, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.065 to 155.100 reserved for expansion]

### SUBCHAPTER D. RECORDS AND REPORTS

#### § 155.101. Record of Tobacco Products

(a) A distributor, wholesale dealer, or retailer shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record of tobacco products purchased and of tobacco products received. The record must include all invoices, bills of lading, waybills, freight bills, express receipts or copies of express receipts, and any shipping records furnished by the carrier and the seller or shipper.

(b) A distributor, wholesale dealer, or retailer shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record in a well-bound book that provides complete information on tobacco products purchased and on tobacco products received. The record must show:

- (1) the date the tobacco products were received;
- (2) whether the tobacco products were drop-shipped or otherwise;
- (3) the name and address of the seller and the shipper;
- (4) the place from which the tobacco products were shipped or delivered;
- (5) the place where the tobacco products were received;
- (6) the name of the carrier if shipped by common carrier;
- (7) the name of the boat or barge if shipped by water;
- (8) if received by mail, whether sent registered mail, insured parcel post, or ordinary mail;
- (9) the number and kind of tobacco products received on which tax has been paid; and
- (10) if a distributor, an inventory made the first of each month showing the number and kind of tobacco products on hand on which tax has been paid.

[Acts 1981, 67th Leg., p. 1674, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.102. Report of Sale or Use

(a) A distributor or wholesale dealer shall keep at each place of business in this state, except as provided by Section 155.110 of this code, a record of

each sale, distribution, or use of tobacco products whether taxed under this chapter or not. The record shall be kept on an invoice supplied by the distributor or wholesale dealer. The invoice shall be supported by the receipts and records furnished by the carrier. The invoice shall be issued in duplicate, unless the sale or distribution is made by drop shipment, in which case the invoice shall be issued in triplicate. The original invoice shall be delivered to the purchaser, and the duplicate shall be kept by the distributor or wholesale dealer. If tobacco products are distributed or exchanged in a manner other than a sale, the invoice must explain the transaction. If a distributor or wholesale dealer sells tobacco products at retail, the distributor or wholesale dealer shall issue an invoice to the retail department for tobacco products to be sold at retail, and the distributor or wholesale dealer shall keep the stock invoice for retail sale separate from other stock.

(b) A distributor or wholesale dealer shall keep at each place of business in this state a record in a well-bound book of all tobacco products sold, distributed, or used by the distributor or wholesale dealer.

(c) The invoice and record book must show for each sale, distribution, or use of tobacco products:

- (1) the date of sale, distribution, or use;
- (2) the purchaser's name and address;
- (3) the means of delivery;
- (4) if delivered by common carrier, the name of the carrier;
- (5) if delivered by mail, whether by registered mail, insured parcel post, or ordinary mail;
- (6) the designation of drop shipment if the sale is a drop shipment by a distributor;
- (7) the number and kind of tobacco products sold; and
- (8) if the sale is by a distributor, the number and kind of tobacco products on which the tax has been paid.

[Acts 1981, 67th Leg., p. 1674, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.103. Interstate Business

If a person sells tobacco products in interstate commerce only, the person shall keep the same type of records and make the same type of reports that are required of a distributor.

[Acts 1981, 67th Leg., p. 1675, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.104. Salesman

A salesman who is employed by a manufacturer, who handles only the products of the employer, and who sells or distributes tobacco products on which the tax has been paid in this state for resale shall keep the same records that are required of a wholesale dealer. The salesman shall deliver the original of the invoice required by Section 155.102 of this

code to the purchaser or recipient of the tobacco products.

[Acts 1981, 67th Leg., p. 1675, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.105. Solicitor

(a) A solicitor shall keep in this state a record of orders solicited and orders taken for tobacco products. The record must show:

- (1) the quantity and kind of tobacco products ordered or shipped;
- (2) the name of the person from whom the tobacco products were ordered or by whom the tobacco products are shipped;
- (3) the name and address of the purchaser;
- (4) the date the tobacco products were ordered; and
- (5) if available, the date the tobacco products were shipped.

(b) If a solicitor is given credit for or furnished records of an order or shipment shipped by the vendor that the solicitor represents, the solicitor shall keep the record whether or not the solicitor took the order.

[Acts 1981, 67th Leg., p. 1675, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.106. Records Kept Separate

A person required to keep records or invoices, bills of lading, freight bills, waybills, express receipts, requisitions, or copies of orders by this subchapter shall keep the records separate from records of other merchandise handled.

[Acts 1981, 67th Leg., p. 1675, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.107. Carrier

(a) A common or contract carrier that transports tobacco products in this state shall keep a record in this state of tobacco products handled or transported. The record must show for each transaction:

- (1) the names of the consignor and the consignee;
- (2) the date of delivery; and
- (3) the kind or quantity of tobacco products transported or handled.

(b) The carrier shall keep the record required by this section and all books or records in the custody of the carrier showing the shipment of tobacco products open at all times for inspection by the comptroller or the attorney general. The carrier shall allow the comptroller and the attorney general free access to books, records, and tobacco products in the carrier's custody.

[Acts 1981, 67th Leg., p. 1670, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.108. Distributing Agent's Record

(a) A distributing agent shall keep at each place of business in this state a record of tobacco prod-

ucts received and a record of each distribution or delivery made by the distributing agent.

(b) The record of tobacco products received must include the originals or copies of all:

- (1) orders;
- (2) invoices;
- (3) bills of lading;
- (4) waybills;
- (5) freight bills;
- (6) express receipts; and

(7) shipping records furnished to the distributing agent by the carrier and the shipper.

(c) The record of a distribution or delivery must include:

- (1) orders or copies of orders;
- (2) invoices or copies of invoices; and
- (3) shipping records furnished by the carrier and the person ordering the distribution or delivery.

[Acts 1981, 67th Leg., p. 1676, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.109. Vending Machine Record

(a) A person who operates a vending machine shall keep, at the place designated in the application as the permanent place for records, a record of all tobacco products vending machines possessed.

(b) The record must show for each machine:

- (1) the date the machine was received from the seller;
- (2) the serial number of the machine;
- (3) the present location of the machine;
- (4) the date the machine was placed on location;
- (5) the current permit number of the machine;
- (6) the date the permit expires; and
- (7) if the machine is sold or disposed of, the name and address of the person receiving the machine.

[Acts 1981, 67th Leg., p. 1676, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.110. Availability of Records

(a) A person, other than a common carrier or contract carrier, required by this subchapter to keep a record, shall keep the record available at all times for two years for inspection by the comptroller and the attorney general.

(b) If a distributor's, wholesale dealer's, or retailer's place of business is a vending machine, train, or vehicle, the distributor, wholesale dealer, or retailer shall designate in the application for a permit a permanent place to keep the records. The distributor, wholesale dealer, or retailer shall keep the records in the designated place after the tobacco products are delivered from the vending machine, train, or vehicle.

[Acts 1981, 67th Leg., p. 1676, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.111. Distributor's Report

(a) A distributor shall file with the comptroller in Austin, on or before the 10th day of each calendar month, a report for the preceding month.

(b) The report must show:

- (1) the amounts of cigars and tobacco products purchased, received, acquired, or ordered;
- (2) the amounts of cigars and tobacco products sold, distributed, used, lost, or disposed of;
- (3) the amounts of cigars and tobacco products on hand at the beginning and the end of the month; and
- (4) any other information the comptroller requires relating to cigars and tobacco products handled and to taxes due on them.

(c) The comptroller shall prescribe the form of the report.

[Acts 1981, 67th Leg., p. 1677, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.112. Solicitor's Report

(a) A solicitor shall file with the comptroller, on or before the fifth day of each month, a copy of each order solicited by him in this state during the preceding calendar month. The comptroller shall supply the forms.

(b) The copy must show:

- (1) the quantity and kind of tobacco products ordered;
- (2) the name of the person ordering the tobacco products;
- (3) the name of the person from whom the tobacco products were ordered;
- (4) the name and address of the purchaser;
- (5) the date the tobacco products were ordered; and
- (6) any other information the comptroller requires.

[Acts 1981, 67th Leg., p. 1677, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.113. Distributing Agent's Report

(a) A distributing agent in this state shall report to the comptroller each day except Sundays and holidays all tobacco product deliveries made by the distributing agent on the preceding day or days.

(b) The comptroller shall prescribe the form of the report, and the distributing agent shall furnish the form.

(c) The report must show:

- (1) the name of the person ordering the delivery;
- (2) the date of delivery;
- (3) the name and address of the person to whom delivered;
- (4) the invoice number;
- (5) the bill of lading or waybill number;



- (6) the quantity and kind of tobacco products delivered;
- (7) the means of delivery;
- (8) the transportation agent; and
- (9) the designation of drop shipment if a drop shipment.

(d) If the invoice furnished to the distributing agent by the manufacturer or person ordering the delivery or the bill of lading prepared by the distributing agent to cover the shipment under the invoice contains the information required by this section, a copy of the invoice or bill of lading may be sent to the comptroller instead of the report.

[Acts 1981, 67th Leg., p. 1677, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.114 to 155.140 reserved for expansion]

**SUBCHAPTER E. ENFORCEMENT OF TAX**

**§ 155.141. Evidence**

(a) In a suit to establish or collect a tax, penalty, and cost of audit from a distributor, the following types of reports are admissible in evidence and are prima facie evidence of their contents:

- (1) a report filed with the comptroller by the distributor, or a copy of a report certified to by the comptroller or the comptroller's chief clerk, showing the number of tobacco products sold by the distributor on which a tax, penalty, and cost of audit has not been paid; or
- (2) an audit made by the comptroller from the books or records of the distributor, or an audit made by another person if signed and sworn to as being made from the records of the distributor or persons from whom the distributor has bought, received, or delivered tobacco products.

(b) The inaccuracy of the report or audit may be shown.

[Acts 1981, 67th Leg., p. 1678, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.142. Venue**

A civil suit filed under this chapter may be brought in Travis County or in the county of the defendant's domicile.

[Acts 1981, 67th Leg., p. 1678, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.143. Seizure**

(a) The comptroller with or without process may seize:

- (1) tobacco products taxed under this chapter that are possessed or controlled by a person for the purpose of selling or removing the tobacco products in violation of this chapter;
- (2) tobacco products that are removed, deposited, or concealed by a person intending to avoid payment of taxes imposed by this chapter;

(3) an automobile, truck, boat, conveyance, or other type of vehicle used to remove or transport tobacco products by a person intending to avoid payment of taxes imposed by this chapter; and

(4) equipment, paraphernalia, or other tangible personal property used by a person intending to avoid payment of taxes imposed by this chapter found in the place where the tobacco products are found.

(b) An item seized under this section is forfeited to the state and remains in the custody of the comptroller, sheriff, or other officer for disposition as provided by this chapter. The seized item is not subject to replevin.

[Acts 1981, 67th Leg., p. 1678, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.144. Comptroller's Report**

(a) If the comptroller seizes property under Section 155.143 of this code, the comptroller shall immediately make a written report showing:

- (1) the name of the person making the seizure;
- (2) the place where the property was seized;
- (3) the person from whom the property was seized;
- (4) an inventory; and
- (5) an appraisal showing the ordinary retail price of the items seized.

(b) The comptroller shall prepare the report in duplicate. The person who seized the property shall sign the report. The comptroller shall give the original to the person from whom the property was seized and shall file a duplicate copy open for public inspection in the comptroller's office.

[Acts 1981, 67th Leg., p. 1678, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.145. Forfeiture Proceeding**

(a) At the comptroller's request, the attorney general or the district or county attorney of the county where the seizure occurred shall file an in rem proceeding in a court of competent jurisdiction in the county of seizure. The state is the plaintiff, and the owner or person in possession of the seized property is the defendant. If the owner or possessor is unknown, the seized property is the defendant.

(b) After the suit is filed, the clerk of the court shall notify the owner or person in possession to appear before the court on a named date to show cause why the property should not be forfeited. The date of appearance may not be set for less than two days after the date of service of the notice. The notice shall be served by the sheriff of the county.

(c) On the comptroller's affidavit that the defendant is a nonresident, that the defendant's residence is unknown, or that the defendant's name is unknown, notice or process shall be served or published in the manner provided by law for service on

nonresidents or unknown defendants. The hearing may not be held before the expiration of 10 days after the date of service or of the first publication of the notice. The court shall appoint an attorney to represent the nonresident or unknown defendant. The attorney has the rights, duties, and compensation as provided by law for an attorney appointed to represent a nonresident defendant or an unknown defendant.

[Acts 1981, 67th Leg., p. 1679, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.146. Sale by Sheriff

(a) If a court renders final judgment maintaining a seizure and declaring a forfeiture as provided by Section 155.145 of this code, the court shall order that the sheriff sell the property to the highest bidder at public auction in the county of seizure. The sheriff shall give 10 days' notice of the sale by advertising at least twice in a legal publication in the county.

(b) The sheriff shall send the sale proceeds, less expenses of seizure and court costs, to the state treasury. The net proceeds are allocated as provided by Subchapter H of this code.<sup>1</sup>

(c) If the district or county attorney files and prosecutes a case under Section 155.145 of this code, a fee of \$15 shall be paid to the official in addition to other fees allowed by law. The fee is collected as court costs out of the sale proceeds.

[Acts 1981, 67th Leg., p. 1679, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> So in enrolled bill; probably should read "Subchapter H of this chapter" (§ 155.241).

#### § 155.147. Sale by Comptroller

In lieu of the forfeiture proceeding provided by Section 155.145 of this code, the comptroller may sell seized property through the summary proceeding provided by Section 155.148 of this code if the property appears by the report or receipt of the officer seizing it to be of an appraised value of \$500 or less.

[Acts 1981, 67th Leg., p. 1679, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.148. Summary Proceeding

(a) The comptroller shall publish a notice in a newspaper in the county where the seizure was made. The notice must;

- (1) give a description of the property;
- (2) state the time and place of seizure;
- (3) state the cause of seizure; and
- (4) require a person claiming an interest in the property to appear and make a claim within 15 days after the date of publication.

(b) A person claiming an interest in seized property may:

- (1) file a claim with the comptroller stating the person's interest in the property; and

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(2) execute a bond to the state in the amount of \$250 with sureties approved by the comptroller conditioned on the person paying the cost of the forfeiture proceeding if forfeiture is established.

(c) If the comptroller receives the bond provided for by this section, the comptroller shall send the bond with a certified copy of the report or receipt of the property seized as provided by Section 155.144 of this code to the attorney general or the county or district attorney of the county of seizure. The attorney general or county or district attorney shall file and prosecute forfeiture proceedings as provided by Section 155.145 of this code.

(d) If no person files a timely claim and executes a bond, the comptroller shall:

- (1) give 10 days' notice of the sale of the seized property by publishing notice twice in a newspaper in the county of seizure;
- (2) sell the seized property at the time and place specified in the notice at public auction; and
- (3) after deducting the cost of seizure, appraisal, custody, and sale, deposit the proceeds in the treasury to be allocated as provided by Subchapter H of this chapter.<sup>1</sup>

[Acts 1981, 67th Leg., p. 1679, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Section 155.241.

#### § 155.149. Tax Not Paid

If the tax has not been paid on tobacco products seized under Section 155.143 of this code, an officer who sells the tobacco products shall pay the tax and deduct the amount of the tax from the sale proceeds.

[Acts 1981, 67th Leg., p. 1680, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.150. Seizure or Sale No Defense

The seizure, forfeiture, and sale of tobacco products or property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter.

[Acts 1981, 67th Leg., p. 1680, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 155.151. Waiver Permitted

(a) The comptroller may waive a forfeiture proceeding for property seized under Section 155.143 of this code if the owner or possessor of the property;

- (1) pays the tax due; and
- (2) pays to the state through the comptroller an additional sum equal to the tax due.

(b) The comptroller may make a compromise with a person before or after a claim is filed in court. The comptroller shall keep a record open for public inspection of compromises and waivers of forfeiture made under this section.

[Acts 1981, 67th Leg., p. 1680, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.152. Payment to Treasury**

The comptroller shall deposit money collected under Section 155.151 of this code, after payment of costs and commissions, in the treasury to be allocated as provided by Subchapter H of this chapter.

[Acts 1981, 67th Leg., p. 1680, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.153. State Tax Lien Preferred**

The taxes, penalties, and costs of auditing provided by Section 155.181 of this code that a distributor owes this state are a preferred lien, first and prior to other existing liens, contract or statutory, legal or equitable, on all property of the distributor used in the distributor's business.

[Acts 1981, 67th Leg., p. 1680, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.154. Property Included**

Property subject to the lien provided for by Section 155.153 of this code includes:

- (1) manufacturing plants;
- (2) storage plants;
- (3) warehouses;
- (4) office buildings and equipment;
- (5) motor vehicles or equipment used as a vehicle;
- (6) each tract of land on which a manufacturing plant, storage plant, warehouse, office building, or other property is located;
- (7) tangible property that is used to carry on the distributor's business; and
- (8) all the distributor's tobacco products.

[Acts 1981, 67th Leg., p. 1681, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.155 to 155.180 reserved for expansion]

**SUBCHAPTER F. ADMINISTRATION  
BY COMPTROLLER**

**§ 155.181. Auditing Costs**

(a) If a distributor fails to pay a tax or penalty in the proper manner when due as required by this chapter, the comptroller may employ a person to determine the amount due. If the distributor has not paid the tax or penalty, the distributor shall pay the reasonable expenses incurred in the investigation and audit as an additional penalty.

(b) The comptroller shall deposit funds paid in under this section to the credit of a special fund in the treasury to be used for making audits. The comptroller may use other funds available for audits when the special fund is exhausted.

[Acts 1981, 67th Leg., p. 1681, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.182. Payment of Double Amount**

(a) If the comptroller finds that a person has sold tobacco products without the tax having been paid, the comptroller may require the person to pay the state through the comptroller a sum equal to twice the amount of tax due.

(b) If the person does not furnish the comptroller evidence of a report showing tax payment to cover nontax-paid tobacco products purchased by the person, it is presumed that the tobacco products were sold without reporting and paying the tax.

[Acts 1981, 67th Leg., p. 1681, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.183. Inspection**

(a) To determine the tax liability of a person dealing in tobacco products, the comptroller may:

- (1) inspect any premises where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange;
- (2) remain on the premises as long as necessary to determine the tax liability;
- (3) examine the records required by this chapter or records kept incident to the conduct of the tobacco products business of the person dealing in tobacco products; and
- (4) examine stocks of tobacco products.

(b) A person dealing in tobacco products may not:

- (1) fail to produce, on the comptroller's demand, records required by this chapter; or
- (2) hinder or prevent the inspection of the required records or the examination of the premises.

[Acts 1981, 67th Leg., p. 1681, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.184. Credit for Tax Paid**

(a) The comptroller may make rules providing for credit for tax paid on tobacco products if the tobacco products have become unfit for use or consumption or unsalable.

(b) The comptroller may not allow credit under this section unless the comptroller is satisfied that the tobacco products are unfit for use or consumption or unsalable and have been destroyed or returned to the manufacturer.

[Acts 1981, 67th Leg., p. 1682, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.185. Information Confidential**

(a) Information obtained by the attorney general or the comptroller from a record, report, instrument, or copy of a record, report, or instrument that is required by this chapter is confidential and not open to public inspection, except as provided by Subsections (c), (d), and (e) of this section.

(b) Information obtained by the attorney general or the comptroller during an examination of a taxpayer's books, records, papers, officers, employees,

business affairs, operations, source of income, profits, losses, or expenditures is confidential and not open to public inspection, except as provided by Subsections (c) and (d) of this section.

(c) The comptroller or the attorney general may use information obtained from an examination or obtained from a record, report, instrument, or copy of a record, report, or instrument to enforce the provisions of this chapter.

(d) The comptroller or the attorney general may authorize examination by other officers and law enforcement officials of this state, by tax officials of another state, or by officials of the federal government if a reciprocal arrangement exists.

(e) Information set forth in a lien filed under this title or in a permit issued under Sections 155.041-155.043 of this code is not confidential.

[Acts 1981, 67th Leg., p. 1682, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.186 to 155.200 reserved for expansion]

#### SUBCHAPTER G. PENALTIES

##### § 155.201. Penalties

(a) A person violates this chapter if the person:

(1) is a distributor, wholesale dealer, retailer, or distributing agent and fails to keep records required by this chapter;

(2) is a distributor, wholesale dealer, or retailer and sells tobacco products taxed under this chapter without a valid permit;

(3) is a distributor, wholesale dealer, or distributing agent and fails to make a report required by this chapter to the comptroller or makes a false or incomplete report;

(4) is a distributing agent and stores, distributes, or delivers tobacco products on which the tax has not been paid in this state without a valid permit; or

(5) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule made by the comptroller under this chapter.

(b) A person who violates this chapter forfeits and shall pay to the state a penalty of not less than \$25 nor more than \$500.

(c) A separate offense is committed each day on which a violation occurs.

(d) The attorney general shall bring suits to recover penalties under this section.

(e) A suit under this section may be brought in a court of competent jurisdiction in Travis County or in any court having jurisdiction.

[Acts 1981, 67th Leg., p. 1682, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.202. Payment of Tax

A person commits an offense if the person, without the tax being paid or accounted for by a licensed distributor:

(1) makes a first sale of cigars or tobacco products;

(2) sells, offers for sale, or presents as a prize or gift tobacco products; or

(3) knowingly consumes, uses, or smokes tobacco products.

[Acts 1981, 67th Leg., p. 1683, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.203. Possession: Tax Due \$50 or Less

(a) A person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax of \$50 or less is required to be paid. The absence of evidence of tax payment is notice that the tax has not been paid and is prima facie evidence of nonpayment.

(b) This section does not prohibit transportation of tobacco products by a common carrier.

[Acts 1981, 67th Leg., p. 1683, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.204. Concealment of Violation

A person commits an offense if the person uses any artful device or deceptive practice to conceal a violation of this chapter.

[Acts 1981, 67th Leg., p. 1683, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.205. Misleading the Comptroller

A person commits an offense if the person misleads the comptroller in the enforcement of this chapter.

[Acts 1981, 67th Leg., p. 1683, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.206. Refusing to Surrender Tobacco Products

A person commits an offense if the person refuses to surrender to the comptroller on demand tobacco products possessed in violation of this chapter.

[Acts 1981, 67th Leg., p. 1683, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 155.207. Permits

A person commits an offense if the person:

(1) as a distributor or representative of a distributor, makes a first sale without having a valid permit;

(2) as a distributor or a representative of a distributor, makes a first sale without having a permit posted where it can be easily seen by the public;

(3) as a distributor, wholesale dealer, or the representative of a distributor or wholesale dealer, does not deliver an invoice required by Section 155.102 of this code to the purchaser;

(4) as a wholesale dealer, retailer, or the representative of a wholesale dealer or retailer, sells tobacco products without having a valid permit;

(5) as a wholesale dealer, retailer, or representative of a wholesale dealer or retailer, sells tobacco products without having a permit posted where it can be easily seen by the public;

(6) as a distributing agent, stores or distributes tobacco products on which the tax has not been paid without having a valid permit; or

(7) offers for sale or solicits an order in this state for tobacco products to be shipped to a place in this state without having a valid solicitor's permit.

[Acts 1981, 67th Leg., p. 1683, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.208. Misdemeanor**

An offense under Sections 155.202-155.207 of this code is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1981, 67th Leg., p. 1684, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.209. Transportation of Tobacco Products**

A person commits an offense if the person:

(1) knowingly transports tobacco products taxed under this chapter without the tax being accounted for by a licensed distributor;

(2) wilfully refuses to stop a motor vehicle operated to transport tobacco products after a request to stop from an authorized person; or

(3) while transporting tobacco products, refuses to permit a complete inspection of the cargo by an authorized person.

[Acts 1981, 67th Leg., p. 1684, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.210. Inspection of Premises**

A person commits an offense if the person refuses to permit a complete inspection by an authorized person of any premises where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange.

[Acts 1981, 67th Leg., p. 1684, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.211. Possession: Tax Due More Than \$50**

(a) 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.

(b) This section does not prohibit transportation of tobacco products by a common carrier.

[Acts 1981, 67th Leg., p. 1684, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.212. Books and Records**

A person commits an offense if the person:

(1) as a distributor, distributing agent, or the representative of a distributor or distributing agent knowingly makes, delivers to, and files with the comptroller an incomplete return or report;

(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

(3) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required to be kept by this chapter or that are incidental to the conduct of the tobacco products business and may be kept;

(4) knowingly fails to make entries in the books and records required by this chapter to be kept by a distributor, wholesale dealer, retailer, or distributing agent; or

(5) fails to keep for two years in this state books and records required by this chapter to be kept by a distributor, wholesale dealer, retailer, or distributing agent.

[Acts 1981, 67th Leg., p. 1684, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.213. Felony**

An offense under Sections 155.209-155.212 of this code is a felony punishable by:

(1) confinement in the state penitentiary for not more than two years or confinement in the county jail for not less than one month nor more than six months;

(2) a fine of not less than \$100 nor more than \$5,000; or

(3) both fine and confinement.

[Acts 1981, 67th Leg., p. 1684, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.214. Overlap of Penalties**

If an offense is punishable under Section 155.208 of this code and also under Section 155.213 of this code, the punishment prescribed by Section 155.213 of this code controls.

[Acts 1981, 67th Leg., p. 1685, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 155.215. Venue for Felony**

Venue of a prosecution for an offense punishable under Section 155.213 of this code is in Travis County or in the county where the offense occurred.

[Acts 1981, 67th Leg., p. 1685, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 155.216 to 155.240 reserved for expansion]

**SUBCHAPTER H. ALLOCATION OF TAX**

**§ 155.241. Allocation of Tax**

Revenue collected under this chapter shall be deposited to the credit of the general revenue fund.

[Acts 1981, 67th Leg., p. 1685, ch. 389, § 1, eff. Jan. 1, 1982.]

**CHAPTER 156. HOTEL OCCUPANCY TAX****SUBCHAPTER A. DEFINITIONS****Sec.**

156.001. Definitions.

**SUBCHAPTER B. TAX**

- 156.051. Tax Imposed.  
 156.052. Rate of Tax.  
 156.053. Collection of Tax.

**SUBCHAPTER C. EXCEPTIONS TO TAX**

- 156.101. Exception—Permanent Resident.  
 156.102. Exception—Religious, Charitable, or Educational Organization.

**SUBCHAPTER D. REPORTS AND PAYMENTS**

- 156.151. Report and Payment.  
 156.152. Access to Books and Records.  
 156.153. Reimbursement for Tax Collection.

**SUBCHAPTER E. ENFORCEMENT**

- 156.201. Interest on Delinquent Taxes.  
 156.202. Penalty.  
 156.203. Criminal Penalty.  
 156.204. Tax Collection on Termination of Business.

**SUBCHAPTER F. DISPOSITION OF REVENUE**

- 156.251. Revenue Deposited in General Revenue Fund.

**SUBCHAPTER A. DEFINITIONS****§ 156.001. Definitions**

In this chapter:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, or nursing home.

(2) "Quarterly period" means a quarter of the calendar year. The first quarter is composed of the months of January, February, and March; the second quarter is composed of the months of April, May, and June; and the third quarter is composed of the months of July, August, and September; and the fourth quarter is composed of the months of October, November, and December.

[Acts 1981, 67th Leg., p. 1686, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 156.002 to 156.050 reserved  
for expansion]

**SUBCHAPTER B. TAX****§ 156.051. Tax Imposed**

(a) A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$2 or more each day.

(b) The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.

[Acts 1981, 67th Leg., p. 1686, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 156.052. Rate of Tax**

The rate of the tax imposed by this chapter is three percent of the price paid for a room in a hotel.

[Acts 1981, 67th Leg., p. 1686, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 156.053. Collection of Tax**

A person owning, operating, managing, or controlling a hotel shall collect for the state the tax that is imposed by this chapter and that is calculated on the amount paid for a room in the hotel.

[Acts 1981, 67th Leg., p. 1686, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 156.054 to 156.100 reserved  
for expansion]

**SUBCHAPTER C. EXCEPTIONS TO TAX****§ 156.101. Exception—Permanent Resident**

This chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

[Acts 1981, 67th Leg., p. 1686, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 156.102. Exception—Religious, Charitable, or Educational Organization**

This chapter does not impose a tax on a corporation or association that is organized and operated exclusively for a religious, charitable, or educational purpose if no part of the net earnings of the corporation or association inure to the benefit of a private shareholder or individual.

[Acts 1981, 67th Leg., p. 1686, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 156.103 to 156.150 reserved  
for expansion]

**SUBCHAPTER D. REPORTS AND PAYMENTS****§ 156.151. Report and Payment**

On the last day of January, April, July, and October, a person required to collect the tax imposed by this chapter shall pay the comptroller the tax collected during the preceding quarterly period and at the same time shall file with the comptroller a report stating:

(1) the total amount of the payments made for rooms at the person's hotel during the preceding quarterly period;

(2) the amount of the tax collected by the person during the preceding quarterly period; and

(3) other information that the comptroller requires to be in the report.

[Acts 1981, 67th Leg., p. 1687, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 156.152. Access to Books and Records

After the comptroller gives reasonable notice to a person that the comptroller intends to inspect the books or records of the person, the comptroller has access to the person's books or records necessary for the comptroller to determine the correctness of a report filed under this chapter or the amount of taxes due under this chapter.

[Acts 1981, 67th Leg., p. 1687, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 156.153. Reimbursement for Tax Collection

The person required to file a report under this chapter may deduct and withhold from the taxes otherwise due to the state on the quarterly return, as reimbursement for the cost of collecting the tax, one percent of the amount of the tax due as shown on the report. If taxes due under this chapter are not paid to the state within the time required or if the person required to file a report fails to file the report when due, the person forfeits the claim to reimbursement that could have been taken if the tax had been paid or the report filed when due.

[Acts 1981, 67th Leg., p. 2779, ch. 752, § 11, eff. Jan. 1, 1982.]

Acts 1981, 67th Leg., p. 960, ch. 366, § 1, amended Taxation—General, art. 23.04 [now, this section]. Section 3 of said Act provides:

"This Act takes effect October 1, 1981, and applies to taxes collected on or after that date."

[Sections 156.154 to 156.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

§ 156.201. Interest on Delinquent Taxes

A tax imposed by this chapter that is not paid to the comptroller when it is due draws interest as provided by Section 111.060 of this code.

[Acts 1981, 67th Leg., p. 1687, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 156.202. Penalty

(a) If the person who is required to pay to the comptroller the tax imposed by this chapter fails to file a report or does not pay the tax when it is due, the person shall forfeit to the state a penalty of five percent of the amount of tax due.

(b) If the person who is required to pay the tax to the comptroller does not pay the tax within 30 days after it is due, the person shall forfeit to the state a penalty of an additional five percent of the amount of tax due.

(c) The minimum penalty under this section is \$1.

[Acts 1981, 67th Leg., p. 1687, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 156.203. Criminal Penalty

(a) A person commits an offense if the person fails to file a report with the comptroller, collect a tax for the state, or pay a tax to the comptroller as the person is required to do by this chapter.

(b) An offense under this section is a misdemeanor or punishable by a fine of not less than \$100 or more than \$1,000.

[Acts 1981, 67th Leg., p. 1687, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 156.204. Tax Collection on Termination of Business

(a) If a person who is liable for the payment of an amount under Section 156.151 of this code is the owner of the hotel and sells the hotel, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount due until the seller provides a receipt from the state comptroller showing that the amount has been paid or a certificate stating that no amount is due.

(b) The purchaser of a hotel who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a hotel may request that the comptroller issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The comptroller shall issue the certificate or statement within 60 days after receiving the request or within 60 days after the day on which the records of the former owner of the hotel are made available for audit, whichever period expires later, but in either event the comptroller shall issue the certificate or statement within 90 days after the date of receiving the request.

(d) If the comptroller fails to mail the certificate or statement within the applicable period provided by Subsection (c) of this section, the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

(e) The period of limitation during which the comptroller may assess tax against the purchaser under this section is four years from the date when the former owner of the hotel sells the hotel or when a determination is made against the former owner, whichever event occurs later. At any time within three years after a deficiency determination against the purchaser has become due and payable the comptroller may bring an action in a district court of Travis County or a court of any other state of the United States in the name of the people of

Texas to collect the delinquent amounts together with penalties and interest.

[Acts 1983, 68th Leg., p. 302, ch. 65, § 1, eff. May 3, 1983.]

[Sections 156.205 to 156.250 reserved for expansion]

#### SUBCHAPTER F. DISPOSITION OF REVENUE

##### § 156.251. Revenue Deposited in General Revenue Fund

The revenue from the tax imposed by this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

[Acts 1981, 67th Leg., p. 1688, ch. 389, § 1, eff. Jan. 1, 1982.]

### CHAPTER 157. INTERSTATE MOTOR CARRIER SALES AND USE TAX

#### SUBCHAPTER A. GENERAL PROVISIONS

##### Sec.

157.001. Definitions.

#### SUBCHAPTER B. IMPOSITION OF TAX

157.101. Tax Imposed.

157.102. Tax Rate.

#### SUBCHAPTER C. ENFORCEMENT AND COLLECTION

157.201. Permits.

157.202. Reports.

157.203. Records.

157.204. Penalty and Interest.

157.205. Enforcement by the Comptroller; Rules and Regulations.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### § 157.001. Definitions

In this chapter:

(1) "Person" includes an individual, firm, partnership, joint venture, corporation, association, organization, or group or combination acting as a unit.

(2) "Motor carrier" means:

(A) a person who transports persons or property for hire or who holds himself out to the public as willing to transport persons or property for hire by motor vehicle;

(B) a person who leases, rents, or otherwise provides a motor vehicle for the use of others and who in connection therewith in the regular course of business provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator therefor;

(C) a person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged; or

(D) a person who engages in transportation by motor vehicle of persons or property for compensation, other than transportation referred to in Paragraph (A) of this subdivision, under continuing contracts with one person or a limited number of persons either:

(i) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served; or

(ii) for the furnishing of transportation services designed to meet the distinct and peculiar needs of each individual customer which are not normally provided by a common carrier.

(3) "Interstate motor vehicle" means a motor vehicle whose registration fees could be apportioned if the motor vehicle were registered in a state or province of a country which was a member of the International Registration Plan. For the purposes of this chapter, a bus used in transportation of chartered parties shall be considered an interstate motor vehicle if it meets all the standards required of other motor vehicles for apportioned registration fees.

(4) "Truck-tractor" means every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(5) "Commercial motor vehicle" means any motor vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property or persons.

(6) "Trailer" means every vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(7) "Semitrailer" means a vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

(8) "Trip-lease equipment" means a motor vehicle leased between any person and a motor carrier on a single trip basis and driven by the lessor or an employee of the lessor.

(9) "Purchase" includes a lease for a time period exceeding 180 days except the lease of a motor vehicle with a driver.

(10) "Preceding year" means the period of 12 consecutive calendar months immediately prior to September 1.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

Acts 1981, 67th Leg., p. 634, ch. 254, § 2, eff. Jan. 1, 1982, which added Taxation—General, arts. 6A.201 to 6A.208, and which was repealed by Acts 1981, 67th Leg., p. 2786, ch. 752, § 17, eff. Jan. 1, 1982, was incorporated into the Tax Code by the addition of this chapter. Section 3 of Acts 1981, 67th Leg., p. 637, ch. 254, provides:

"(a) Since Chapter 6, Title 122A, failed to establish adequate administrative provisions and failed to define "use" in regard to interstate commerce, the use tax provisions in Chapter 6 will not apply to interstate motor vehicles as defined in this Act and which



were purchased or first brought into the state prior to the effective date of this Act or to contracts executed prior to the effective date of this Act. The clarifying amendments of this Act shall apply to interstate motor vehicles purchased or first brought into the state or contracts executed after the effective date of this Act.

"(b) This Act becomes effective January 1, 1982."

[Sections 157.002 to 157.100 reserved  
for expansion]

SUBCHAPTER B. IMPOSITION OF TAX

§ 157.101. Tax Imposed

There is levied a motor vehicle sales and use tax on interstate motor vehicles, trailers, and semitrailers operated by motor carriers which are residents of this state or are domiciled or doing business in this state.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

§ 157.102. Tax Rate

(a) Except as provided in Subsections (c), (d), and (e) of this section, the payment of the tax is the responsibility of the motor carrier operating the motor vehicle and the tax rate on an interstate motor vehicle shall be calculated as follows:

(1) The carrier's total miles operated in Texas by interstate truck-tractors and interstate commercial motor vehicles during the preceding year is divided by the total miles operated by the same interstate truck-tractors and interstate commercial motor vehicles operated in Texas during the preceding year;

(2) The percentage calculated in Subdivision (1) of this subsection is multiplied by four percent of the purchase price of each interstate motor vehicle purchased in Texas or first brought into the State of Texas during the reporting period. If a lease price is used in this formula, charges for gasoline, maintenance, insurance, and pass-through charges, such as federal highway use tax and fees for licensing and registration, may be excluded from the lease price;

(3)(A) From the amount computed in Subdivision (2) of this subsection may be deducted the amount of sales and use tax paid on the interstate motor vehicle multiplied by the formula in Subdivision (1) of this subsection;

(B) If an operator is paying sales or use tax on lease payments, he may take the credit allowed by Paragraph (A) of this subdivision on a quarterly basis.

(b) If a motor carrier has not operated in Texas during the preceding year, it shall estimate the miles it will drive during the year and use the estimate in the calculations set forth in Subsection (a) of this section. The carrier shall adjust any overpayments or underpayments of tax based on actual mileage in the first reporting period after a year of operation.

(c)(1) The payment of the tax is the responsibility of the motor carriers operating the motor vehicle,

and the tax rate on an interstate trailer or semitrailer being purchased or first brought into Texas during a reporting period shall be calculated as follows:

(A) The number of truck-tractors operated in Texas by the motor carrier during the reporting period is divided by the total number of truck-tractors operated by a motor carrier in the reporting period;

(B) The percentage calculated in Paragraph (A) of this subdivision is multiplied by four percent of the purchase price of all trailers and semitrailers purchased during the reporting period;

(C) The amount calculated in Paragraph (B) of this subdivision is multiplied by the formula in Subsection (a)(1) of this section;

(D) From the amount calculated in Paragraph (C) of this subdivision shall be deducted the amount of sales and use taxes paid on all trailers and semitrailers purchased in the reporting period multiplied by the percentages calculated in Paragraph (A) of this subdivision and in Subsection (a)(1) of this section;

(2) However, if the motor carrier can prove that the actual number of trailers or semitrailers being purchased in Texas or first brought into Texas during a reporting period is less than the number under the formula in Subsection (c)(1) of this section, the motor carrier may pay tax on the lesser number using the formula in Subsection (a) of this section. If a motor carrier chooses to use the actual number of trailers or semitrailers purchased in Texas or first brought into Texas during a reporting period and then uses the formula for other reporting periods, the motor carrier must remit tax on trailers and semitrailers purchased during the period it used the actual count when the trailers or semitrailers are first brought into the state.

(d) If a motor carrier contracts to hire an interstate motor vehicle with a driver to transport persons or property over the carrier's routes and under the authority of the carrier's permits, the tax rate is \$25 per truck-tractor per contract and \$25 per trailer or semitrailer per contract and is the responsibility of the motor carrier operating the motor vehicle. However, if a sales and use tax of at least four percent of the purchase price of the motor vehicle has been paid or if tax under Subsection (a), (b), or (c) of this section has been paid, no tax is due on the vehicle under this subsection. This subsection may not be utilized by a motor carrier contracting with a person being controlled or having controlling interest in the motor carrier. Controlling interest is defined as 50 percent of ownership.

(e) If a motor carrier contracts to use trip-leased equipment, the tax rate is \$5 per motor vehicle per contract and is the responsibility of the motor carrier operating the motor vehicle. However, if a sales and use tax of at least four percent of the purchase price of the motor vehicle has been paid or if tax

under Subsection (a) of this section has been paid, no tax is due on the vehicle under this subsection. This subsection may not be utilized by a motor carrier contracting with a person being controlled or having controlling interest in the motor carrier. Controlling interest is defined as 50 percent of ownership.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

[Sections 157.103 to 157.200 reserved  
for expansion]

#### SUBCHAPTER C. ENFORCEMENT AND COLLECTION

##### § 157.201. Permits

(a) Motor carriers required to pay tax under this chapter shall be permitted by the comptroller.

(b) The permit may be used by the motor carrier to register motor vehicles, trailers, and semitrailers with the county tax assessor-collector without paying the motor vehicle sales and use tax under Chapter 152 of this code if the motor vehicle is being registered as an apportioned motor vehicle or if the motor vehicle is a bus used in the interstate transportation of chartered parties.

(c) Lessors may title an interstate motor vehicle, trailer, and semitrailer leased for periods in excess of 180 days under the permit authority of the motor carrier operating the vehicle without payment of taxes imposed by Chapter 152 of this code, if the motor vehicle is being registered as an apportioned motor vehicle or if the motor vehicle is a bus used in the interstate transportation of chartered parties.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

##### § 157.202. Reports

(a) The motor carriers subject to the provisions of this chapter shall report and pay the tax to the comptroller quarterly on or before the last day of the month succeeding each calendar quarter.

(b) Notwithstanding the provisions of Subsection (a) of this section, the comptroller may prescribe the date and period for filing reports and payments in order to facilitate the collection of the tax including a longer reporting period for motor carriers owing a minimal amount of tax.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

##### § 157.203. Records

Motor carriers are required to keep records and supporting documents including mileage records regarding the payment of motor carrier sales and use tax in such form as the comptroller may reasonably require. The motor carriers must keep the records for at least three years.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

##### § 157.204. Penalty and Interest

Any person who fails to timely pay the tax required by this chapter forfeits five percent of the amount due as a penalty, and after the first 30 days, forfeits an additional five percent. The penalty may never be less than \$1. Delinquent taxes shall draw interest at the rate of 10 percent per annum, beginning 60 days from the date due.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

##### § 157.205. Enforcement by the Comptroller; Rules and Regulations

(a) The comptroller shall enforce the provisions of this chapter and may prescribe, adopt, and enforce rules relating to the administration and enforcement of this chapter.

(b) The comptroller may promulgate such forms as are necessary for the administration and enforcement of this chapter.

[Acts 1981, 67th Leg., p. 2750, ch. 752, § 1, eff. Jan. 1, 1982.]

#### CHAPTER 158. MANUFACTURED HOUSING SALES AND USE TAX

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##### SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

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##### SUBCHAPTER A. GENERAL PROVISIONS

##### § 158.001. Short Title

This chapter is known and may be cited as the "Manufactured Housing Sales and Use Tax Act."

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2, eff. March 1, 1982.]

§ 158.002. Definitions

In this chapter, "manufactured home," "manufacturer," "retailer," and "person" have the same meanings as they are given by the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2, eff. March 1, 1982.]

[Sections 158.003 to 158.050 reserved for expansion]

SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

§ 158.051. Tax Imposed

A tax is imposed on the initial sale in this state of every new manufactured home at the rate of five percent of the amount of the sales price determined as provided by Section 158.052 of this code.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982. Amended by Acts 1981, 67th Leg., p. 2757, ch. 752, § 2(b), eff. Sept. 1, 1983.]

§ 158.052. Computation of Tax

The initial sale of a manufactured home occurs on the sale, shipment, or consignment by a manufacturer to a retailer or other person in this state. The tax rule is applied to 65 percent only of the sales price to be paid by the retailer or other person, as set forth in the actual invoice or bill of sale. The sales price does not include any shipping, freight, or delivery charges for the manufactured home from the manufacturer to the retailer or other person if those charges are separately stated on the invoice or bill of sale.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.053. Collection of Tax From Retailer

Every manufacturer engaged in business in this state shall set forth the amount of the tax imposed on each manufactured home on the actual invoice or bill of sale and shall collect the amount of the tax from the retailer or other person to or for whom the manufactured home is sold, shipped, or consigned in this state. As used in this chapter, "manufacturer engaged in business in this state" includes the following:

- (1) any manufacturer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, affiliate, or agent, by whatever name called, an office, manufacturing facility, place of distribution, warehouse, storage place, or other place of business; and
- (2) any manufacturer having a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the manufacturer, or of its subsidiary, affiliate, or agent, for

the purpose of selling, delivering, or the taking of orders for any manufactured home.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.054. Permits

Every manufacturer engaged in business in this state shall file with the comptroller an application for a permit authorizing the manufacturer to sell, ship, or consign manufactured homes to persons in this state. The application must be on a form prescribed by the comptroller and contain the information that the comptroller requires. The application must be executed by the owner of a sole proprietorship, by an officer or partner of an association or partnership, or by an executive officer, or other person who is expressly authorized, of a corporation. A manufacturer may not be issued a permit unless the manufacturer is duly registered and bonded under the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.055. Records

Every manufacturer selling, shipping, or consigning manufactured homes to or for any person in this state shall keep on file for audit purposes for the limitation period records showing:

- (1) the identification number of each module or section of each manufactured home sold, shipped, or consigned;
- (2) the name of the retailer or other person to whom or for whom the manufactured home was sold, shipped, or consigned and the address to which the home was delivered in this state; and
- (3) the sales price of each manufactured home sold, shipped, or consigned.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.056. Report and Tax Payment

(a) Each manufacturer shall send to the comptroller on or before the last day of each month a report showing the total sales prices of manufactured homes sold, shipped, or consigned to or for, any person in this state during the preceding month together with the taxes imposed by this chapter. The report shall be made in the form and manner required by the comptroller.

(b) Along with each monthly report, the manufacturer shall remit to the comptroller monthly the tax imposed by this chapter and due on manufactured homes during the reporting period.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.057. Use Tax

(a) A use tax is imposed on the use or occupancy of a manufactured home in this state at the same

rate as provided by this chapter on the initial sale of a new manufactured home.

(b) "Use" includes the exercise of any right or power over a manufactured home incident to its ownership and includes the incorporation of any manufactured home into real estate or into improvements on real estate.

(c) If a sales or use tax has previously been paid on the manufactured home in any state, credit in the amount of the tax may be taken against any use tax due on the manufactured home under this chapter. If the sales tax imposed by this chapter has previously been paid to the manufacturer, no use tax is due or payable.

(d) The person to whom or for whom the manufactured home is sold, shipped, or consigned in this state is liable for, and shall pay the use tax on 65 percent of the sales price of the manufactured home as set forth in the actual invoice, bill of sale, or other document transferring title. It is presumed that the manufactured home was sold, shipped, or consigned for use or occupancy in this state. If a manufactured home has been registered or titled in another state for a period of at least one year, as shown by a certificate or document of title, it is presumed that the manufactured home was not purchased for use in this state and no use tax is due.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

#### § 158.058. Credit or Refund; Sale to Out-of-State Purchaser for Out-of-State Installation

If the sales tax imposed by this chapter has previously been paid to the manufacturer by a retailer whose first sale at retail is to a resident of another state and if the manufactured home is transported to and installed on a homesite outside of this state and not titled or registered in this state, the retailer is entitled to a credit or refund of the tax previously paid under this chapter. No credit or refund is due or may be paid if any use or occupancy of the manufactured home occurred prior to the first sale at retail by the retailer.

[Acts 1983, 68th Leg., p. 464, ch. 96, § 2, eff. May 10, 1983.]

[Sections 158.059 to 158.100 reserved for expansion]

#### SUBCHAPTER C. EXEMPTIONS

##### § 158.101. Exemptions

(a) There are exempted from the taxes imposed by this chapter the sales price of a manufactured home sold, shipped, or consigned to, or the use or occupancy of any manufactured home by:

(1) the United States or its unincorporated agencies or instrumentalities;

(2) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(3) this state or its unincorporated agencies or instrumentalities;

(4) any county, city or town, special district, or other political subdivision of this state; or

(5) any organization created for religious, educational, charitable, or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual, and provided that the use of the manufactured home is related to the purpose of the organization.

(b) If a person certifies in writing by using an exemption certificate that the person is exempt under this section and that the manufactured home will be used in a manner or for a purpose exempted from the tax, and the person then uses the manufactured home in another manner or for another purpose, the person is liable for the tax. The cost of the manufactured home to the person is the sales price for purposes of determining the amount of tax for which the person is liable.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

[Sections 158.102 to 158.150 reserved for expansion]

#### SUBCHAPTER D. ENFORCEMENT

##### § 158.151. Penalties

(a) If any person fails to file a report required by this chapter or fails to pay the tax imposed, when the report or payment is due, an amount equal to five percent of the tax due shall be forfeited as a penalty. After the first 30 days following the due date of any report or payment, an additional five percent of the amount of the tax shall be forfeited. A penalty may never be less than \$1. Delinquent taxes shall draw interest at the rate of 10 percent a year beginning 60 days from the due date.

(b) A person commits an offense if the person gives an exemption certificate to the seller for a manufactured home, and the person knows that the home will be used in a manner or for a purpose other than exempt purpose as defined by Section 158.101 of this code. An offense under this section is a Class A misdemeanor.

(c) A person commits an offense if the person claims a credit or refund by submitting false information as a basis for the claim. An offense under this section is a Class A misdemeanor.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982. Amended by Acts 1983, 68th Leg., p. 464, ch. 96, § 3, eff. May 10, 1983.]

§ 158.152. Lien

The state has a lien on each new manufactured home installed for use and occupancy in this state for the collection and payment of the tax imposed by this chapter if the tax has not been set forth on the invoice or bill of sale on the initial sale and paid to the manufacturer by the retailer or other person to whom or for whom the manufactured home is sold, shipped, or consigned. The lien shall be filed with the county clerk of the county of this state in which such new manufactured home is installed for use and occupancy. In addition, the lien shall be filed and recorded with the Texas Department of Labor and Standards.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.153. Rules

The comptroller shall adopt rules necessary for the implementation of the provisions of this chapter and for the collection of the taxes imposed by this chapter.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

§ 158.154. Other Taxes

(a) All manufactured homes shall be taxed in accordance with the provisions of Title 1 of this code. A political subdivision of this state may not levy or collect any other tax on a manufactured home.

(b) Manufactured homes are not to be taxed as motor vehicles under Chapter 152 of this code and are not taxable items under Chapter 151 of this code.

(c) A part or an accessory added to a manufactured home by a retailer on which the sales tax is not paid to the manufacturer under this Chapter is subject to the tax imposed by Chapter 151 of this code, and the retailer shall pay the tax to the vendor of the part or accessory. If a retailer is a permitted taxpayer under Chapter 151 of this code and makes separate retail sales of the parts or accessories, a resale certificate may be issued in lieu of paying the tax at the time of purchase, and the tax shall be collected from the purchaser at retail; if the tax is not paid at the time of purchase, the retailer must accrue and remit the tax on each part and accessory which is later removed from inventory and added to a manufactured home.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982. Amended by Acts 1983, 68th Leg., p. 463, ch. 96, § 1, eff. May 10, 1983.]

§ 158.155. Limitation for Collection and Refund

Subchapter D of Chapter 111<sup>1</sup> and Section 111.107 of this code apply to this chapter.

[Acts 1981, 67th Leg., p. 2754, ch. 752, § 2(a), eff. March 1, 1982.]

<sup>1</sup> Section 111.201 et seq.

SUBTITLE F. FRANCHISE TAX

CHAPTER 171. FRANCHISE TAX

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## SUBCHAPTER A. TAX IMPOSED

## § 171.001. Tax Imposed

A franchise tax is imposed on each corporation that does business in this state or that is chartered or authorized to do business in this state.

[Acts 1981, 67th Leg., p. 1691, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 171.002. General Rate of Tax

(a) The rates of the franchise tax on a corporation are:

- (1) \$4.25 for each \$1,000 or fraction of \$1,000 of the corporation's taxable capital that is allocated to this state under Section 171.106 or 171.108 of this code; or
- (2) \$55.

(b) A corporation shall pay the tax on the basis of the rate provided by this section that results in the greater amount of tax due from the corporation to the state.

[Acts 1981, 67th Leg., p. 1691, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 171.003. Special Rate for Certain Corporations

(a) A corporation qualifies for a special franchise tax rate if it does not use the public highways by authority of a certificate of convenience and necessity issued by the Railroad Commission of Texas and if:

(1) it annually pays a tax on intangible assets as required by the law of this state;

(2) it is incorporated for the sole purpose of owning or operating a street railway or passenger bus system in a city, town, or suburb of a city or town;

(3) it is incorporated and does business for the sole purpose of owning, operating, or maintaining an electric interurban railway; or

(4) at least four-fifths of its assets are invested in, and at least four-fifths of its gross income is received from, voting common capital stock that comprises at least four-fifths of the fully voting common stock of a public utility corporation, as defined by the law of this state, whose rates or services are subject to regulation by law.

(b) The special franchise tax rates are:

(1) one-fifth of the amount determined under Section 171.002(a)(1) of this code; or

(2) the amount set by Section 171.002(a)(2) of this code.

(c) A corporation that qualifies for the special tax rate shall pay its tax on the basis of the special rate that results in the greater amount of tax due from the corporation to the state.

[Acts 1981, 67th Leg., p. 1691, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 171.004. Repealed by Acts 1983, 68th Leg., p. 297, ch. 63, § 1, eff. Aug. 29, 1983

§ 171.005. Rate of Tax for Corporation in Process of Liquidation

The franchise tax rate on a corporation in the process of liquidation, as defined by Section 171.102 of this code, is the rate established by Section 171.002(a)(1) of this code.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.006 to 171.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS

§ 171.051. Application for Exemption; Effective Date

(a) Except as provided by Subsection (c) of this section, a corporation may apply for an exemption under this subchapter by filing with the comptroller, as provided by the rules of the comptroller, evidence of the corporation's qualifications for the exemption.

(b) If a corporation files the evidence establishing the corporation's qualifications for an exemption within 15 months after the last day of the calendar month in which the corporation's charter or certificate of authority is dated, the exemption is recognized, if it is finally established, as of the date of the charter or certificate.

(c) The exemption provided by Section 171.063 of this code must be established as provided by that section, but a corporation may apply for and receive other exemptions as provided by this section.

(d) Neither this section nor Section 171.063 of this code requires a corporation that was granted a franchise tax exemption before September 1, 1975, that was entitled to the exemption on September 1, 1975, and that has held the exemption since that date, to file an additional application, report, letter of exemption, or other evidence of qualification for that exemption.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 171.052. Certain Corporations

A corporation that is an insurance company; surety, guaranty, or fidelity company; transportation company; or sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 171.053. Exemption—Railway Terminal Corporation

A corporation organized as a railway terminal corporation and having no annual net income from its business is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 171.054. Exemption—Savings and Loan Association

A savings and loan association chartered or authorized to operate as a savings and loan association by the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 171.055. Exemption—Open-End Investment Company

An open-end investment company, as defined by the Investment Company Act of 1940 (Section 80a-1 et seq., 15 U.S.C.), that is subject to that Act and that is registered under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 171.056. Exemption—Corporation With Business Interest in Solar Energy Devices

A corporation engaged solely in the business of manufacturing, selling, or installing solar energy

devices, as defined by Section 171.107 of this code, is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1693, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.057. Exemption—Nonprofit Corporation Organized to Promote County, City, or Another Area**

A nonprofit corporation organized solely to promote the public interest of a county, city, town, or another area in the state is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.058. Exemption—Nonprofit Corporation Organized for Religious Purposes**

A nonprofit corporation organized for the purpose of religious worship is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.059. Exemption—Nonprofit Corporation Organized to Provide Burial Places**

A nonprofit corporation organized to provide places of burial is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.060. Exemption—Nonprofit Corporation Organized for Agricultural Purposes**

A nonprofit corporation organized to hold agricultural fairs and encourage agricultural pursuits is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.061. Exemption—Nonprofit Corporation Organized for Educational Purposes**

A nonprofit corporation organized solely for educational purposes, including a corporation organized solely to provide a student loan fund or student scholarships, is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.062. Exemption—Nonprofit Corporation Organized for Public Charity**

A nonprofit corporation organized for purely public charity is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.063. Exemption—Nonprofit Corporation Exempt From Federal Income Tax**

(a) A nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5),

(6), or (7) of the Internal Revenue Code of 1954,<sup>1</sup> as it existed on January 1, 1975, is exempted from the franchise tax.

(b) A corporation is entitled to an exemption under this section based on the corporation's exemption from the federal income tax if the corporation files with the comptroller evidence establishing the corporation's exemption.

(c) A corporation's exemption under this section may be established by furnishing the comptroller with a copy of the Internal Revenue Service's letter of exemption issued to the corporation. The copy of the letter may be filed with the comptroller within 15 months after the day that is the last day of a calendar month and that is nearest to the date of the corporation's charter or certificate of authority.

(d) If the Internal Revenue Service has not timely issued to a corporation a letter of exemption, evidence establishing the corporation's exemption under this section is sufficient if the corporation files with the comptroller within the 15-month period established by Subsection (c) of this section evidence that the corporation has applied in good faith for the federal tax exemption.

(e) An exemption established under Subsection (c) or (d) of this section is to be recognized, after it is finally established, as of the date of the corporation's charter or certificate of authority.

(f) If a corporation timely files evidence with the comptroller under Subsection (d) of this section that it has applied for a federal tax exemption and if the application is finally denied by the Internal Revenue Service, this chapter does not impose a penalty on the corporation from the date of its charter or certificate of authority to the date of the final denial.

(g) If a corporation's federal tax exemption is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or maintain its qualification for the exemption, the corporation's exemption under this section ends on April 30 following the effective date of the withdrawal.

[Acts 1981, 67th Leg., p. 1694, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 501(c)(3) to (7).

**§ 171.064. Exemption—Nonprofit Corporation Organized for Conservation Purposes**

A nonprofit corporation organized solely to educate the public about the protection and conservation of fish, game, other wildlife, grasslands, and forests is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1695, ch. 389, § 1, eff. Jan. 1, 1982.]



**§ 171.065. Exemption—Nonprofit Corporation Organized to Provide Water Supply or Sewer Services**

A nonprofit water supply or sewer service corporation organized in behalf of a city or town under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1695, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.066. Exemption—Nonprofit Corporation Involved With City Natural Gas Facility**

A nonprofit corporation organized to construct, acquire, own, lease, or operate a natural gas facility in behalf and for the benefit of a city or residents of a city is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1695, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.067. Exemption—Nonprofit Corporation Organized to Provide Convalescent Homes for Elderly**

A nonprofit corporation organized to provide a convalescent home or other housing for persons who are at least 62 years old or who are handicapped or disabled is exempted from the franchise tax, whether or not the corporation is organized for purely public charity.

[Acts 1981, 67th Leg., p. 1695, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.068. Exemption—Nonprofit Corporation Organized to Provide Cooperative Housing**

A nonprofit corporation engaged solely in the business of owning residential property for the purpose of providing cooperative housing for persons is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1695, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.069. Exemption—Marketing Associations**

A marketing association incorporated under Article 5737 et seq., Revised Civil Statutes of Texas, 1925,<sup>1</sup> is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1695, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Repealed; see, now, Agriculture Code, § 52.001 et seq.

**§ 171.070. Exemption—Lodges**

A lodge incorporated under Article 1399 et seq., Revised Civil Statutes of Texas, 1925, is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.071. Exemption—Farmers' Cooperative Society**

A farmers' cooperative society incorporated under Article 2514 et seq., Revised Civil Statutes of Texas, 1925,<sup>1</sup> is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Repealed; see, now, Agriculture Code, § 51.001 et seq.

**§ 171.072. Exemption—Housing Finance Corporation**

A housing finance corporation incorporated under the Texas Housing Finance Corporations Act (Article 1269l-7, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.073. Exemption—Hospital Laundry Cooperative Association**

A hospital laundry cooperative association incorporated under Chapter 56, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4437f-1, Vernon's Texas Civil Statutes), is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.074. Exemption—Development Corporation**

A nonprofit corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1039, ch. 235, art. 7, § 2(a), eff. Sept. 1, 1983.]

**§ 171.075. Exemption—Cooperative Association**

A cooperative association incorporated under Chapter 195, Acts of the 64th Legislature, 1975 (Article 4447r, Vernon's Texas Civil Statutes), or under the Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.076. Exemption—Cooperative Credit Association**

A cooperative credit association incorporated under Article 2508 et seq., Revised Civil Statutes of Texas, 1925,<sup>1</sup> is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

<sup>1</sup> Repealed; see, now, Agriculture Code, § 55.001 et seq.

**§ 171.077. Exemption—Credit Union**

A credit union incorporated under the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's

Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.078. Exemption—Banks

A corporation chartered as a national, state, or private bank is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.079. Exemption—Electric Cooperative Corporation

An electric cooperative corporation incorporated under the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.080. Exemption—Telephone Cooperative Corporations

A telephone cooperative corporation incorporated under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.081. Exemption—Corporation Exempt by Another Law

Another statute that exempts a corporation from the franchise tax is not affected by this chapter.

[Acts 1981, 67th Leg., p. 1696, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.082. Exemption—Certain Homeowners' Associations

A nonprofit corporation is exempted from the franchise tax if:

- (1) the corporation is organized and operated primarily to obtain, manage, construct, and maintain the property in or of a condominium or residential real estate development; and
- (2) voting control of the corporation is vested in the owners of individual lots, residences, or residential units, and not in the developer.

[Acts 1981, 67th Leg., p. 2758, ch. 752, § 4, eff. May 1, 1982.]

#### § 171.083. Exemption—Emergency Medical Service Corporation

A nonprofit corporation that is organized for the sole purpose of and engages exclusively in providing emergency medical services, including rescue and ambulance services, is exempted from the franchise tax.

[Acts 1981, 67th Leg., p. 2785, ch. 752, § 14, eff. May 1, 1982.]

Acts 1981, 67th Leg., p. 2785, ch. 752, § 14, added this section to conform to Acts 1981, 67th Leg., p. 2305, ch. 565, which, in § 1, amended Taxation—General, art. 12.03(1). Section 2 of Acts 1981, 67th Leg., p. 2306, ch. 565, provided:

"This Act takes effect May 1, 1982, and applies to the franchise tax reporting period beginning on that date."

[Sections 171.084 to 171.100 reserved for expansion]

### SUBCHAPTER C. DETERMINATION OF TAXABLE CAPITAL; ALLOCATION AND APPORTIONMENT

#### § 171.101. Determination of Taxable Capital

The total taxable capital of a corporation is the sum of the corporation's:

- (1) stated capital, as defined by Article 1.02, Texas Business Corporation Act; and
- (2) surplus.

[Acts 1981, 67th Leg., p. 1697, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.102. Determination of Taxable Capital of Corporation in Process of Liquidation

(a) "Corporation in the process of liquidation" means a corporation that:

- (1) adopts and pursues in good faith a plan to marshal the assets of the corporation, to pay or settle with the corporation's creditors and debtors, and to apportion the remaining assets of the corporation among the corporation's stockholders;
- (2) adopts the plan by a resolution approved by the corporation's board of directors and ratified by a majority of the stockholders of record; and
- (3) conducts the liquidation in the manner provided by the law of this state to dissolve a corporation.

(b) The taxable capital of a corporation in the process of liquidation is the difference between the amount of the corporation's stock issued and the amount of the liquidating dividends paid on the stock.

(c) The president and the secretary of the corporation shall file an affidavit with the comptroller containing information about the amount of liquidating dividends paid and a statement that the corporation is in the process of liquidation. The plan described by Subsection (a) of this section for the corporation's liquidation shall be attached to and be a part of the affidavit.

[Acts 1981, 67th Leg., p. 1697, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.103. Determination of Gross Receipts From Business Done in This State

The gross receipts of a corporation from its business done in this state is the sum of the corporation's receipts from:

- (1) each sale of tangible personal property if the property is delivered or shipped to a buyer in

this state regardless of the FOB point or another condition of the sale;

- (2) each service performed in this state;
- (3) each rental of property situated in this state;
- (4) each royalty for the use of a patent or copyright in this state; and
- (5) other business done in this state.

[Acts 1981, 67th Leg., p. 1697, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.104. Gross Receipts From Business Done in Texas: Deduction for Food and Medicine Receipts**

A corporation may deduct from its receipts includable under Section 171.103(1) of this code the amount of the corporation's receipts from sales of the following items, if the items are shipped from outside this state and the receipts would be includable under Section 171.103(1) of this code in the absence of this section:

- (1) food that is exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.314(a) of this code; and
- (2) health care supplies that are exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.313 of this code.

[Acts 1981, 67th Leg., p. 1697, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.1045. Gross Receipts From Business Done in Texas: Deduction for Gross Receipts in Enterprise Zone**

(a) A corporation may deduct from its receipts included under Section 171.103 of this code the receipts included under that section that are produced by a business of the corporation located in a state-federal enterprise zone designated under the Texas Enterprise Zone Act.<sup>1</sup> The deduction authorized by this section may be utilized by a qualified corporation for a period not to exceed five years.

(b) This section takes effect on the first day of the state fiscal year following the date on which the governor certifies that a federal enterprise zone law has been enacted.

[Acts 1983, 68th Leg., p. 4790, ch. 841, § 4.]

<sup>1</sup> Civil Statutes, art. 5190.7.

**§ 171.105. Determination of Gross Receipts From Entire Business**

(a) The gross receipts of a corporation from its entire business is the sum of the corporation's receipts from:

- (1) each sale of the corporation's tangible personal property;
- (2) each service, rental, or royalty; and
- (3) other business.

(b) If a corporation sells an investment or capital asset, the corporation's gross receipts from its entire business include only the net gain from the sale.

[Acts 1981, 67th Leg., p. 1698, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.106. Determination of Amount of Taxable Capital Allocated to This State**

The part of a corporation's taxable capital that is allocated to this state and that is used to determine the amount of the tax imposed by this chapter is equal to the corporation's total taxable capital multiplied by a fraction, the numerator of which is the corporation's gross receipts from business done in this state and the denominator of which is the corporation's gross receipts from its entire business.

[Acts 1981, 67th Leg., p. 1698, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.107. Deduction of Cost of Solar Energy Device From Taxable Capital Allocated to This State**

(a) In this section, "solar energy device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

(b) A corporation may deduct from its taxable capital allocated to this state the amortized cost of a solar energy device if:

- (1) the device is acquired by the corporation for heating or cooling or for the production of power;
- (2) the device is used in this state by the corporation; and
- (3) the cost of the device is amortized in accordance with Subsection (c) of this section.

(c) The amortization of the cost of a solar energy device must:

- (1) be for a period of at least 60 months;
- (2) provide for equal monthly amounts;
- (3) begin on the month in which the device is placed in service in this state; and
- (4) cover only a period in which the device is in use in this state.

(d) A corporation that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period in which a deduction is to be made. On the request of the comptroller, the corporation shall file with the comptroller proof of the cost of the solar energy device or proof of the device's operation in this state.

[Acts 1981, 67th Leg., p. 1698, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.108. Alternate Method of Determining Amount of Taxable Capital Allocated to This State**

If the allocation and apportionment provisions of Sections 171.103, 171.104, 171.105, and 171.106 of this code do not fairly represent the extent of the corporation's business done in this state, the corporation is entitled to request and the comptroller may grant permission for the corporation to use, with respect to all or any part of the corporation's business activity, an alternate allocation and apportionment method by:

- (1) a separate accounting;
- (2) inclusion of additional factors that will fairly represent the corporation's business activity in this state; or
- (3) the employment of any other method that equitably allocates and apportions the taxpayer's capital.

[Acts 1981, 67th Leg., p. 1698, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.109 to 171.150 reserved for expansion]

**SUBCHAPTER D. PAYMENT OF TAX**

**§ 171.151. Period Covered by Tax**

The franchise tax shall be paid for each of the following:

- (1) an initial period beginning on the date that the corporation files its charter or is granted a certificate of authority and ending on the day before the first anniversary of that date;
- (2) a second period beginning on the first anniversary of the date that the corporation files its charter or is granted its certificate of authority and ending on April 30 following that date; and
- (3) after the initial and second periods have expired, a regular annual period beginning each year on May 1 and ending on the following April 30.

[Acts 1981, 67th Leg., p. 1699, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.152. Date on Which Payment is Due**

(a) Payment of the tax covering the initial period is due within 90 days after the date that the initial period ends.

(b) Payment of the tax covering the second period is due on the same date as the tax covering the initial period.

(c) Payment of the tax covering the regular annual period is due June 15 of each year. However, if the first anniversary of the date that the corporation files its charter or is granted its certificate of authority is after December 31 and before May 1, the payment of the tax covering the first regular

annual period is due on the same date as the tax covering the initial period.

[Acts 1981, 67th Leg., p. 1699, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.153. Business on Which Tax is Based**

(a) The tax covering the initial period is based on the business done by the corporation during the period beginning on the day the corporation files its charter or is granted a certificate of authority and ending on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business.

(b) The tax covering the second period is based on the same business on which the tax covering the initial period is based and is to be prorated based on the length of the second period.

(c) The tax covering the regular annual period is based on the business done by the corporation during its fiscal year that ends in the year before the year in which the tax is due. However, if the first anniversary of the date that the corporation files its charter or is granted its certificate of authority is after December 31 and before May 1, the tax covering the first regular annual period is based on the same business on which the tax covering the initial period is based.

[Acts 1981, 67th Leg., p. 1699, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.154. Payment to Comptroller**

A corporation on which a tax is imposed by this chapter shall pay the tax to the comptroller.

[Acts 1981, 67th Leg., p. 1700, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.155. Payment of Tax Deposit**

(a) An applicant for a charter under the Texas Business Corporation Act or the Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes) or for a certificate of authority under the Texas Business Corporation Act must pay to the comptroller as a requirement for the charter or certificate a tax deposit of \$100.

(b) The comptroller shall apply the deposit as a credit against any tax imposed by this chapter on the corporation receiving the charter or certificate of authority.

(c) After the secretary of state issues the charter or certificate of authority, the comptroller may not refund the deposit for any reason.

[Acts 1981, 67th Leg., p. 1700, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.156. Payment of Additional Tax Deposit by Foreign Corporation**

(a) At the time that a foreign corporation applies for a certificate of authority to do business in this state, the corporation shall pay to the comptroller a tax deposit of \$500.

(b) The comptroller shall place the deposit in a trust fund and hold the deposit during the time that the foreign corporation does business in this state. The deposit is to be used to ensure that the foreign corporation files each report required by this chapter and pays any filing fee, tax, penalty, or interest imposed by this chapter.

(c) If a foreign corporation's certificate of authority is forfeited under this chapter, the tax deposit is forfeited. The forfeiture of the deposit does not bar the state's recovery of the amount of the tax due under this chapter that is in excess of the amount of the forfeited deposit. However, if the foreign corporation pays the amount of the tax due under this chapter and files each tax report required by this chapter, the comptroller shall refund to the corporation the amount of the deposit in excess of any tax, penalty, and interest due under this chapter.

(d) If a foreign corporation stops doing business in this state before forfeiture of its certificate of authority and if the corporation demonstrates that each tax report required by this chapter has been filed and the tax and penalty imposed by this chapter have been paid, the comptroller shall refund to the corporation's agent designated under Section 171.354 of this chapter the remaining balance of the deposit.

[Acts 1981, 67th Leg., p. 1700, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.157. Exemption of Foreign Corporation From Tax Deposit Requirement**

(a) A foreign corporation is exempted from the payment of the tax deposit required under Section 171.156 of this code if the comptroller determines that the corporation:

- (1) continuously has maintained good standing relating to the tax for three consecutive reporting years; or
- (2) is exempted by law from the tax.

(b) If a foreign corporation has paid the tax deposit and the corporation becomes exempt from its payment, the comptroller shall refund the deposit to the corporation.

(c) A foreign corporation's exemption from the payment of the tax deposit ends if the comptroller determines that the corporation:

- (1) has not filed a report, paid a tax, or made another payment as required by this chapter; or
- (2) no longer qualifies for an exemption from the tax.

(d) At the time that a foreign corporation's exemption from the payment of the tax deposit ends, the comptroller shall notify the corporation that it must pay the tax deposit.

[Acts 1981, 67th Leg., p. 1700, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.158. Payment by Foreign Corporation Before Withdrawal From State**

(a) Except as provided by Subsection (b) of this section, a foreign corporation holding a certificate of authority to do business in this state may withdraw from doing business in this state by filing a certificate of withdrawal with the secretary of state. The secretary of state shall file the certificate of withdrawal as provided by law.

(b) The foreign corporation may not withdraw from doing business in this state unless it has paid, before filing the certificate of withdrawal, any tax or penalty imposed by this chapter on the corporation.

[Acts 1981, 67th Leg., p. 1701, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.159 to 171.200 reserved for expansion]

**SUBCHAPTER E. REPORTS AND RECORDS**

**§ 171.201. Initial Report**

(a) A corporation on which the franchise tax is imposed shall file an initial report with the comptroller containing:

- (1) information showing the financial condition of the corporation on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business;
- (2) the name and address of each officer and director of the corporation;
- (3) the name and address of the agent of the corporation designated under Section 171.354 of this code; and
- (4) other information required by the comptroller.

(b) The corporation shall file the report within 90 days after the date that the initial period established by Section 171.151(1) of this code ends.

[Acts 1981, 67th Leg., p. 1701, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.202. Annual Report**

(a) A corporation on which the franchise tax is imposed shall file an annual report with the comptroller containing:

- (1) information showing the financial condition of the corporation on the last day of the corporation's fiscal year that ends in the year before the year in which the tax is due;
- (2) the name and address of each officer and director of the corporation;
- (3) the name and address of the agent of the corporation designated under Section 171.354 of this code; and
- (4) other information required by the comptroller.

(b) The corporation shall file the report before June 16 of each year. The report shall be filed on forms supplied by the comptroller.

[Acts 1981, 67th Leg., p. 1701, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 297, ch. 63, § 2, eff. Aug. 29, 1983.]

#### § 171.203. Public Information Report

(a) A corporation on which the franchise tax is imposed shall file a report with the comptroller containing:

(1) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation;

(2) the name of each corporation that owns a 10 percent or greater interest in the corporation filing the report;

(3) the name, title, and mailing address of each officer and director of the corporation;

(4) the name and address of the agent of the corporation designated under Section 171.354 of this code; and

(5) the address of the corporation's principal office and principal place of business.

(b) The corporation shall file the report once a year on a form prescribed by the comptroller.

(c) The comptroller shall forward the report to the secretary of state.

[Acts 1981, 67th Leg., p. 1702, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.204. Information Report

To determine the amount of the franchise tax or to determine the correctness of a franchise tax report, the comptroller may require an officer of a corporation on which the tax is imposed to file an information report with the comptroller stating the amount of the corporation's undivided profits and other surplus.

[Acts 1981, 67th Leg., p. 1702, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.205. Additional Information Required by Comptroller

The comptroller may require a corporation on which the franchise tax is imposed to furnish to the comptroller information from the corporation's books and records that has not been filed previously and that is necessary for the comptroller to determine the amount of the tax.

[Acts 1981, 67th Leg., p. 1702, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.206. Confidential Information

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

(1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or

(2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

[Acts 1981, 67th Leg., p. 1702, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.207. Information Not Confidential

The following information is not confidential and shall be made open to public inspection:

(1) information contained in a document filed under this chapter with a county clerk as notice of a tax lien; and

(2) information contained in a report required by Section 171.203 of this code.

[Acts 1981, 67th Leg., p. 1702, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.208. Prohibition of Disclosure of Information

A person, including a state officer or employee or a shareholder of a corporation, who has access to a report filed under this chapter may not make known in a manner not permitted by law the amount or source of the corporation's income, profits, losses, expenditures, or other information in the report relating to the financial condition of the corporation.

[Acts 1981, 67th Leg., p. 1703, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.209. Right of Shareholder to Examine or Receive Reports

If a person owning at least one share of outstanding stock of a corporation on whom the franchise tax is imposed presents evidence of the ownership to the comptroller, the person is entitled to examine or receive a copy of an initial or annual report that is filed under Section 171.201 or 171.202 of this code and that relates to the corporation.

[Acts 1981, 67th Leg., p. 1703, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.210. Permitted Use of Confidential Information

(a) To enforce this chapter, the comptroller or attorney general may use information made confidential by this chapter.

(b) The comptroller or attorney general may authorize the use of the confidential information in a judicial proceeding in which the state is a party. The comptroller or attorney general may authorize examination of the confidential information by:

(1) another state officer of this state;

(2) a law enforcement official of this state; or

(3) a tax official of another state or an official of the federal government if the other state or the federal government has a reciprocal arrangement with this state.

[Acts 1981, 67th Leg., p. 1703, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.211. Examination of Corporate Records**

To determine the franchise tax liability of a corporation, the comptroller, the state auditor, or the state auditor's authorized representative may investigate or examine the records of the corporation.

[Acts 1981, 67th Leg., p. 1703, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.212 to 171.250 reserved for expansion]

**SUBCHAPTER F. FORFEITURE OF CORPORATE PRIVILEGES**

**§ 171.251. Forfeiture of Corporate Privileges**

The comptroller shall forfeit the corporate privileges of a corporation on which the franchise tax is imposed if the corporation:

- (1) does not file, in accordance with this chapter and within 90 days after the date it is due, an initial report required by Section 171.201 of this code;
- (2) does not file, in accordance with this chapter and before September 16 of the year in which it is due, an annual report that is required by Section 171.202 of this code;
- (3) does not pay, before September 16 of the year in which it is due, a tax imposed by this chapter that is due under Section 171.152(c) of this code on the preceding June 15 or does not pay, before September 16, a penalty imposed by this chapter relating to that tax;
- (4) does not pay, within 90 days after the date it is due, a tax imposed by this chapter that is due under Section 171.152 of this code on a date other than June 15 or does not pay, within those 90 days, a penalty imposed by this chapter relating to that tax; or
- (5) does not permit the comptroller, the state auditor, or the state auditor's authorized representative to examine under Section 171.211 of this code the corporation's records.

[Acts 1981, 67th Leg., p. 1703, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.252. Effects of Forfeiture**

If the corporate privileges of a corporation are forfeited under this subchapter:

- (1) the corporation shall be denied the right to sue or defend in a court of this state; and

(2) each director or officer of the corporation is liable for a debt of the corporation as provided by Section 171.255 of this code.

[Acts 1981, 67th Leg., p. 1704, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.253. Suit on Cause of Action Arising Before Forfeiture**

In a suit against a corporation on a cause of action arising before the forfeiture of the corporate privileges of the corporation, affirmative relief may not be granted to the corporation unless its corporate privileges are revived under this chapter.

[Acts 1981, 67th Leg., p. 1704, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.254. Exception to Forfeiture**

The forfeiture of the corporate privileges of a corporation does not apply to the privilege to defend in a suit to forfeit the corporation's charter or certificate of authority.

[Acts 1981, 67th Leg., p. 1704, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.255. Liability of Director and Officers**

(a) If the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. The liability includes liability for any tax or penalty imposed by this chapter on the corporation that becomes due and payable after the date of the forfeiture.

(b) The liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership.

(c) A director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred:

- (1) over the director's objection; or
- (2) without the director's knowledge and that the exercise of reasonable diligence to become acquainted with the affairs of the corporation would not have revealed the intention to create the debt.

(d) If a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this chapter, the liability under this section of a director or officer of the corporation is not affected by the revival of the charter or certificate and the corporate privileges.

[Acts 1981, 67th Leg., p. 1704, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.256. Notice of Forfeiture**

(a) If the comptroller proposes to forfeit the corporate privileges of a corporation, the comptroller

shall notify the corporation that the forfeiture will occur without a judicial proceeding unless the corporation:

(1) files, within the time established by Section 171.251 of this code, the report to which that section refers; or

(2) pays, within the time established by Section 171.251 of this code, the delinquent tax and penalty to which that section refers.

(b) The notice shall be written or printed and shall be verified by the seal of the comptroller's office.

(c) The comptroller shall mail the notice to the corporation within 45 days after the day on which the report, tax, or penalty is due. The notice shall be addressed to the corporation and mailed to the address named in the corporation's charter as its principal place of business or to another known place of business of the corporation.

(d) The comptroller shall keep at the comptroller's office a record of the date on which the notice is mailed. For the purposes of this chapter, the notice and the record of the mailing date constitute legal and sufficient notice of the forfeiture.

[Acts 1981, 67th Leg., p. 1704, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.257. Judicial Proceeding Not Required for Forfeiture

The forfeiture of the corporate privileges of a corporation is effected by the comptroller without a judicial proceeding.

[Acts 1981, 67th Leg., p. 1705, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.258. Revival of Corporate Privileges

The comptroller shall revive the corporate privileges of a corporation if the corporation, before the forfeiture of its charter or certificate of authority, pays any tax, penalty, or interest due under this chapter.

[Acts 1981, 67th Leg., p. 1705, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.259 to 171.300 reserved for expansion]

### SUBCHAPTER G. FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY

#### § 171.301. Grounds for Forfeiture of Charter or Certificate of Authority

It is a ground for the forfeiture of a corporation's charter or certificate of authority if:

(1) the corporate privileges of the corporation are forfeited under this chapter and the corporation does not pay, within 120 days after the date the corporate privileges are forfeited, the amount necessary for the corporation to revive under this chapter its corporate privileges; or

(2) the corporation does not permit the comptroller, the state auditor, or the state auditor's authorized representative to examine the corporation's records under Section 171.211 of this code.

[Acts 1981, 67th Leg., p. 1705, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.302. Certification by Comptroller

After the 120th day after the date that the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall certify the name of the corporation to the attorney general and the secretary of state.

[Acts 1981, 67th Leg., p. 1705, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.303. Suit for Judicial Forfeiture

On receipt of the comptroller's certification, the attorney general shall bring suit to forfeit the charter or certificate of authority of the corporation if a ground exists for the forfeiture of the charter or certificate.

[Acts 1981, 67th Leg., p. 1705, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.304. Record of Judicial Forfeiture

(a) If a district court forfeits a corporation's charter or certificate of authority under this chapter, the clerk of the court shall promptly mail to the secretary of state a certified copy of the court's judgment. On receipt of the copy of the judgment, the secretary of state shall inscribe on the corporation's record at the secretary's office the words "Judgment of Forfeiture" and the date of the judgment.

(b) If an appeal of the judgment is perfected, the clerk of the court shall promptly certify to the secretary of state that the appeal has been perfected. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office the word "Appealed" and the date on which the appeal was perfected.

(c) If final disposition of an appeal is made, the clerk of the court making the disposition shall promptly certify to the secretary of state the type of disposition made and the date of the disposition. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office a brief note of the type of final disposition made and the date of the disposition.

[Acts 1981, 67th Leg., p. 1705, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 171.305. Revival of Charter or Certificate of Authority After Judicial Forfeiture

A corporation whose charter or certificate of authority is judicially forfeited under this chapter is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

(1) the corporation files each report that is required by this chapter and that is delinquent;



(2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the suit under Section 171.306 of this code to set aside forfeiture is filed; and

(3) the forfeiture of the corporation's charter or certificate is set aside in a suit under Section 171.306 of this code.

[Acts 1981, 67th Leg., p. 1706, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.306. Suit to Set Aside Judicial Forfeiture**

If a corporation's charter or certificate of authority is judicially forfeited under this chapter, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may bring suit in a district court of Travis County in the name of the corporation to set aside the forfeiture of the charter or certificate. The suit must be in the nature of a bill of review. The secretary of state and attorney general must be made defendants in the suit.

[Acts 1981, 67th Leg., p. 1706, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.307. Record of Suit to Set Aside Judicial Forfeiture**

If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the secretary of state shall inscribe on the corporation's record in the secretary's office the words "Charter Revived by Court Order" or "Certificate Revived by Court Order," a citation to the suit, and the date of the court's judgment.

[Acts 1981, 67th Leg., p. 1706, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.308. Corporate Privileges After Judicial Forfeiture is Set Aside**

If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation and shall inscribe on the corporation's record in the comptroller's office a note of the revival.

[Acts 1981, 67th Leg., p. 1706, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.309. Forfeiture by Secretary of State**

The secretary of state may forfeit the charter or certificate of authority of a corporation if:

(1) the secretary receives the comptroller's certification under Section 171.302 of this code;

(2) the corporation does not revive its forfeited corporate privileges before January 1 following the date that the corporate privileges were forfeited; and

(3) the corporation does not have assets from which a judgment for any tax, penalty, or court costs imposed by this chapter may be satisfied.

[Acts 1981, 67th Leg., p. 1707, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.310. Judicial Proceeding Not Required for Forfeiture by Secretary of State**

The forfeiture by the secretary of state of a corporation's charter or certificate of authority under this chapter is effected without a judicial proceeding.

[Acts 1981, 67th Leg., p. 1707, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.311. Record of Forfeiture by Secretary of State**

The secretary of state shall effect a forfeiture of a corporation's charter or certificate of authority under this chapter by inscribing on the corporation's record in the secretary's office the words "Charter Forfeited" or "Certificate Forfeited," the date on which this inscription is made, and a citation to this chapter as authority for the forfeiture.

[Acts 1981, 67th Leg., p. 1707, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.312. Revival of Charter or Certificate of Authority After Forfeiture by Secretary of State**

A corporation whose charter or certificate of authority is forfeited under this chapter by the secretary of state is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

(1) the corporation files each report that is required by this chapter and that is delinquent;

(2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the request under Section 171.313 of this code to set aside forfeiture is made; and

(3) the forfeiture of the corporation's charter or certificate is set aside in a proceeding under Section 171.313 of this code.

[Acts 1981, 67th Leg., p. 1707, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.313. Proceeding to Set Aside Forfeiture by Secretary of State**

(a) If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may request in the name of the corporation that the secretary of state set aside the forfeiture of the charter or certificate.

(b) If a request is made, the secretary of state shall determine if each delinquent report has been filed and any delinquent tax, penalty, or interest has

been paid. If each report has been filed and the tax, penalty, or interest has been paid, the secretary shall set aside the forfeiture of the corporation's charter or certificate of authority.

[Acts 1981, 67th Leg., p. 1707, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.314. Corporate Privileges After Forfeiture by Secretary of State is Set Aside**

If the secretary of state sets aside under this chapter the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.315. Use of Corporate Name After Revival of Charter or Certificate of Authority**

If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state and if the corporation requests the secretary to set aside the forfeiture under Section 171.313 of this code, the corporation shall determine from the secretary whether the corporation's name is available for use. If the name is not available, the corporation shall amend its charter or certificate to change its name.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.316 to 171.350 reserved for expansion]

**SUBCHAPTER H. ENFORCEMENT**

**§ 171.351. Venue of Suit to Enforce Chapter**

Venue of a civil suit against a corporation to enforce this chapter is either in a county where the corporation's principal office is located according to its charter or certificate of authority or in Travis County.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.352. Authority to Restrain or Enjoin**

To enforce this chapter, a court may restrain or enjoin a violation of this chapter.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.353. Appointment of Receiver**

If a court forfeits a corporation's charter or certificate of authority, the court may appoint a receiver for the corporation and may administer the receivership under the laws relating to receiverships.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.354. Agent for Service of Process**

Each corporation on which a tax is imposed by this chapter shall designate a resident of this state as the corporation's agent for the service of process.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.355. Service of Process on Secretary of State**

(a) Legal process may be served on a domestic corporation by serving it on the secretary of state if the process relates to the forfeiture of the corporation's charter or to the collection of a tax or penalty imposed by this chapter and:

(1) if the local agent of the corporation or if the officers named in the corporation's charter or annual report on file with the secretary of state do not reside or cannot be located in the county in which the corporation's principal office, as stated in the charter, is located; or

(2) if the principal office of the corporation is not maintained or cannot be located in the county in which the charter states that the office is located.

(b) Complete and valid service of process is made on a corporation through the secretary of state by delivering duplicate copies of the process to the secretary of state or the assistant secretary of state.

(c) On receipt of legal process under this section, the secretary of state promptly shall forward to the corporation by registered mail a copy of the process. The copy of the process shall be mailed to the address named in the corporation's charter as its principal place of business or to another place of business of the corporation as shown by the records in the secretary of state's office.

(d) The failure of the secretary of state to mail a copy of legal process to a corporation does not affect the validity of the service of process. It is competent and sufficient proof of the service of process that the secretary of state certifies under the secretary's official seal the receipt of the process.

(e) The secretary of state shall keep a record of each legal process served on the secretary under this section showing the date and time of the receipt of the process and the secretary's action on the process.

(f) This section is cumulative of other laws relating to service of process.

[Acts 1981, 67th Leg., p. 1708, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.356. Tax Lien**

The state has a prior lien on a corporation's property to secure the payment of all taxes and penalties imposed by this chapter.

[Acts 1981, 67th Leg., p. 1709, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.357. Notice of Lien**

(a) If the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall file:

(1) a tax lien notice with the clerk of the county in which the principal place of business of the corporation, as stated in its charter or certificate of authority, is located; and

(2) a copy of the tax lien notice with the clerk of each county in which the comptroller believes the corporation has real or personal property.

(b) The notice shall be of any tax or penalty due under this chapter by the corporation and the liens securing their payment. The notice shall include the name of the corporation on whom the tax or penalty is imposed, the amount of the tax or penalty due, and information about any tax or penalty that may become due. The notice shall be on a form prepared or approved by the attorney general.

(c) The county clerk with whom a tax lien notice is filed shall record and index the notice in the clerk's tax lien records.

[Acts 1981, 67th Leg., p. 1709, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.358. Effect of Tax Lien Notice**

A tax lien notice that is filed, recorded, and indexed as provided by this chapter is notice to each party dealing with the real or personal property of a corporation that:

(1) a tax or penalty is due and may become due under this chapter by the corporation; and

(2) the state has liens securing the payment of the tax or penalty.

[Acts 1981, 67th Leg., p. 1709, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.359. Release of Lien**

(a) The comptroller may make and deliver:

(1) a complete release of a lien created by this chapter if full payment of any tax or penalty secured by the lien is made; or

(2) a partial release of a lien created by this chapter if partial payment of any tax or penalty secured by the lien is made in an amount that the comptroller considers adequate and proper under the circumstances.

(b) A release by the comptroller shall be on a form prepared or approved by the attorney general.

[Acts 1981, 67th Leg., p. 1709, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.360. Limitation on Suit to Enforce Lien**

A suit for the enforcement of a lien created by this chapter may not be begun more than two years after the date that the corporation against whose property the lien is imposed forfeits under this chapter its corporate privileges.

[Acts 1981, 67th Leg., p. 1710, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.361. Penalty for Disclosure of Information on Report**

(a) A person commits an offense if the person violates Section 171.208 of this code prohibiting the disclosure of information on a report filed under this chapter.

(b) An offense under this section is punishable by a fine of not more than \$1,000, confinement in jail for not more than one year, or both.

[Acts 1981, 67th Leg., p. 1710, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 171.362. Penalty for Failure to Pay Tax or File Report**

(a) If a corporation on which a tax is imposed by this chapter fails to pay the tax when it is due and payable or fails to file a report required by this chapter when it is due, the corporation is liable for a penalty of five percent of the amount of the tax due.

(b) If the tax is not paid or the report is not filed within 30 days after the due date, a penalty of an additional five percent of the tax due is imposed.

(c) The minimum penalty under this section is \$1.

[Acts 1981, 67th Leg., p. 1710, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 171.363 to 171.400 reserved for expansion]

**SUBCHAPTER I. DISPOSITION OF REVENUE**

**§ 171.401. Revenue Deposited in General Revenue Fund**

The revenue from the tax imposed by this chapter shall be deposited to the credit of the general revenue fund.

[Acts 1981, 67th Leg., p. 1710, ch. 389, § 1, eff. Jan. 1, 1982.]

**SUBTITLE G. GROSS RECEIPTS TAXES**

**CHAPTER 181. CEMENT PRODUCTION TAX**

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SUBCHAPTER E. CLASSIFICATION OF TAX AND  
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181.201. Occupation Tax.

181.202. Allocation of Tax Revenue.

SUBCHAPTER A. TAX

§ 181.001. Tax Imposed

(a) A tax is imposed on a person who:

(1) manufactures or produces cement in, or imports cement into, the state; and

(2) distributes or sells the cement in intrastate commerce or uses the cement in the state.

(b) The tax is computed on the amount of cement distributed, sold, or used by the person for the first time in intrastate commerce.

(c) The tax applies to only one distribution, sale, or use of cement.

[Acts 1981, 67th Leg., p. 1711, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.002. Rate of Tax

The rate of the tax imposed by this chapter is \$0.0275 for each 100 pounds or fraction of 100 pounds of taxable cement.

[Acts 1981, 67th Leg., p. 1711, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.003. Payment of Tax

(a) The person on whom the tax is imposed by this chapter shall pay the tax to the comptroller at the comptroller's Austin office.

(b) The tax payment is due on the 25th day of each month, and the amount of the tax is computed on the amount of business done during the preceding month by the person on whom the tax is imposed.

[Acts 1981, 67th Leg., p. 1711, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.004. Exemption: Interstate Commerce

The tax imposed by this chapter is not computed on an interstate distribution or sale of cement.

[Acts 1981, 67th Leg., p. 1711, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 181.005 to 181.050 reserved  
for expansion]

SUBCHAPTER B. REPORTS AND RECORDS

§ 181.051. Report

On or before the 25th day of each month, a person on whom the tax is imposed by this chapter shall file with the comptroller a report stating:

(1) the amount of taxable cement distributed, sold, or used by the person during the preceding month;

(2) the amount of cement produced in, imported into, or exported out of the state by the person during the preceding month; and

(3) other information that the comptroller requires to be in the report.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.052. Records

(a) A person on whom the tax is imposed by this chapter shall keep a record of the business conducted by the person and of other information that the comptroller requires to be kept.

(b) The record is an open record to the comptroller and the attorney general.

(c) The comptroller shall adopt rules to enforce this section.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 181.053 to 181.100 reserved  
for expansion]

SUBCHAPTER C. ENFORCEMENT

§ 181.101. Interest on Delinquent Taxes

A tax imposed by this chapter that is delinquent draws interest as provided by Section 111.060 of this code.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.102. Tax Lien

The state has a prior lien for a tax or interest on a tax imposed by this chapter that is delinquent or for a penalty imposed by this chapter. The lien is on the property used in the business of distributing, selling, or using cement by the person on whom the tax is imposed by this chapter.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.103. Prohibition on Delinquent Taxpayer;  
Injunction

(a) A person who is delinquent in the payment of the tax imposed by this chapter may not engage in an activity or participate in a transaction for which the person is taxed by this chapter.

(b) The attorney general may sue in Travis County or another county having venue to enjoin a person from violating this section.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 181.104. Penalty

(a) A person on whom the tax is imposed by this chapter and who fails to file a report as required by

this chapter or does not pay the tax when it is due forfeits to the state a penalty of five percent of the amount of tax delinquent.

(b) If the report required by this chapter is not filed or the tax imposed by this chapter is not paid within 30 days after it is due, the person on whom the tax is imposed forfeits to the state a penalty of an additional five percent of the amount of tax delinquent.

(c) The minimum penalty under this section is \$1.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 451, ch. 93, § 4, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

**§ 181.105. Criminal Penalty**

(a) A person who violates a provision of this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than \$25 nor more than \$1,000. A separate offense is committed each day a violation occurs.

[Acts 1981, 67th Leg., p. 1712, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 181.106 to 181.150 reserved for expansion]

**SUBCHAPTER D. RESTRICTION ON MUNICIPALITIES**

**§ 181.151. Restriction on Taxing Authority of Municipalities**

A municipal corporation may not impose an occupation tax similar to the tax imposed by this chapter.

[Acts 1981, 67th Leg., p. 1713, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 181.152 to 181.200 reserved for expansion]

**SUBCHAPTER E. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE**

**§ 181.201. Occupation Tax**

The tax imposed by this chapter is an occupation tax.

[Acts 1981, 67th Leg., p. 1713, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 181.202. Allocation of Tax Revenue**

One-fourth of the revenue from the tax imposed by this chapter shall be deposited to the credit of the available school fund and three-fourths to the general revenue fund.

[Acts 1981, 67th Leg., p. 1713, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

**CHAPTER 182. MISCELLANEOUS GROSS RECEIPTS TAXES**

**SUBCHAPTER A. TELEGRAPH COMPANIES**

Sec.

- 182.001. Definitions.
- 182.002. Imposition and Rate of Tax.
- 182.003. Political Subdivisions of the State.
- 182.004. Franchise Tax.

**SUBCHAPTER B. UTILITY COMPANIES**

- 182.021. Definitions.
- 182.022. Imposition and Rate of Tax.
- 182.023. Payment of Tax.
- 182.024. Political Subdivisions.
- 182.025. Charges by a City.
- 182.026. Subchapter Not Applicable.

**SUBCHAPTER C. CAR COMPANIES**

- 182.041. Definitions.
- 182.042. Imposition and Rate of Tax.

**SUBCHAPTER D. TELEPHONE COMPANIES**

- 182.061. Definitions.
- 182.062. Imposition and Rate of Tax.
- 182.063. Political Subdivisions.
- 182.064. Subchapter Not Applicable.

**SUBCHAPTER E. TAX COLLECTIONS AND BUSINESS PERMITS**

- 182.081. Reports.
- 182.082. Tax Payments: Due Date.
- 182.083. Payment of Tax if Business Begun After Beginning of Quarter.
- 182.084. Addition Reports.
- 182.085. Forms.
- 182.086. Permit Required; Form of Permit.
- 182.087. Application and Issuance of Permit.
- 182.088. Suspension of Permit.

**SUBCHAPTER F. PENALTIES**

- 182.101. Repealed.
- 182.102. Penalty for Failure to File Report or to Pay Tax.
- 182.103. Suits.
- 182.104. Transacting Business Without a Permit: Penalty.

**SUBCHAPTER G. NATURE AND ALLOCATION OF TAX**

- 182.121. Nature of Tax.
- 182.122. Allocation of Tax.

**SUBCHAPTER A. TELEGRAPH COMPANIES**

**§ 182.001. Definitions**

In this subchapter:

- (1) "Telegraph company" means a person who:

(A) owns or operates a telegraph line or a telegraph station in this state; and

(B) charges for sending telegraph messages.

(2) "Business" means the transmission of telegraph messages, at full or half rate, and the lease or use of wires or equipment, but does not include:

(A) business transacted for agencies of the United States government for which rates are set by the postmaster general;

(B) business involving the transmission of communications from one point in Texas to another point in Texas by means of equipment located outside this state; or

(C) business involving the provision of equipment or circuits used to transmit communication across the boundaries of this state or involving access to that equipment or circuits.

[Acts 1981, 67th Leg., p. 1714, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 723, ch. 163, § 1, eff. Sept. 1, 1983.]

#### § 182.002. Imposition and Rate of Tax

(a) A tax is imposed on each telegraph company on the gross receipts from business done in this state.

(b) The tax rates are:

(1) 1.5 percent of the gross receipts from business done outside an incorporated city or town or in an incorporated city or town having a population of 2,500 or less;

(2) 1.75 percent of the gross receipts from business done in an incorporated city or town having a population of more than 2,500 but not more than 10,000; and

(3) 2.275 percent of the gross receipts from business done in an incorporated city or town having a population of more than 10,000.

[Acts 1981, 67th Leg., p. 1714, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 182.003. Political Subdivisions of the State

No city or other political subdivision of this state may impose, on a telegraph company taxed under Section 182.002 of this code, an occupation tax or any charge for the privilege of doing business.

[Acts 1981, 67th Leg., p. 1715, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 182.004. Franchise Tax

(a) This subchapter does not prohibit the collection by a city of a franchise tax in effect on October 31, 1936.

(b) This subchapter does not affect any contracts made between a city and a franchise holder.

[Acts 1981, 67th Leg., p. 1715, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 182.005 to 182.020 reserved for expansion]

### SUBCHAPTER B. UTILITY COMPANIES

#### § 182.021. Definitions

In this subchapter:

(1) "Utility company" means a person who owns or operates a gas, electric light, electric power, or water works, or water and light plant used for local sale and distribution located within an incorporated city or town in this state.

(2) "Business" means the providing of gas, electric light, electric power, or water.

[Acts 1981, 67th Leg., p. 1715, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 182.022. Imposition and Rate of Tax

(a) A tax is imposed on each utility company located in an incorporated city or town having a population of more than 1,000, according to the last federal census next preceding the filing of the report.

(b) The tax rates are:

(1) .581 percent of the gross receipts from business done in an incorporated city or town having a population of more than 1,000 but less than 2,500, according to the last federal census next preceding the filing of the report;

(2) 1.07 percent of the gross receipts from business done in an incorporated city or town having a population of 2,500 or more but less than 10,000, according to the last federal census next preceding the filing of the report; and

(3) 1.997 percent of the gross receipts from business done in an incorporated city or town having a population of 10,000 or more, according to the last federal census next preceding the filing of the report.

[Acts 1981, 67th Leg., p. 1715, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 182.023. Payment of Tax

Only one utility company pays the tax on a commodity. If the commodity is produced by one utility company and distributed by another, the distributor pays the tax.

[Acts 1981, 67th Leg., p. 1715, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 182.024. Political Subdivisions

No city or other political subdivision of this state may impose an occupation tax or charge of any sort on a utility company taxed under this subchapter.

[Acts 1981, 67th Leg., p. 1715, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 182.025. Charges by a City

(a) An incorporated city or town may make a reasonable lawful charge for the use of a city

street, alley, or public way by a public utility in the course of its business.

(b) The total charges, however designated or measured, may not exceed two percent of the gross receipts of the public utility for the sale of gas, electric energy, or water within the city.

(c) If a public utility taxed under this subchapter pays a special tax, rental, contribution, or charge under a contract or franchise executed before May 1, 1941, the city shall credit the payment against the amount owed by the public utility on any charge allowable under Subsection (a) of this section.

[Acts 1981, 67th Leg., p. 1716, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 182.026. Subchapter Not Applicable**

(a) This subchapter does not apply to a utility company owned and operated by a city, town, county, water improvement district, or conservation district.

(b) This subchapter does not:

- (1) affect collection of ad valorem taxes; or
- (2) impair or alter a provision of a contract, agreement, or franchise made between a city and a public utility company relating to a payment made to the city.

[Acts 1981, 67th Leg., p. 1716, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 182.027 to 182.040 reserved for expansion]

**SUBCHAPTER C. CAR COMPANIES**

**§ 182.041. Definitions**

In this subchapter:

(1) "Car company" means a person who:

(A) owns a stock car, refrigerator or fruit car of any kind, tank car of any kind, coal car of any kind, furniture car, common box car, or flat car; and

(B) leases or charges mileage for the use of the car.

(2) "Business" means the leasing of or charging mileage for the use of the car.

[Acts 1981, 67th Leg., p. 1716, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 182.042. Imposition and Rate of Tax**

(a) A tax is imposed on each car company residing or incorporated outside this state on the gross receipts from business done in this state.

(b) The tax rate is three percent of the gross receipts.

[Acts 1981, 67th Leg., p. 1716, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 182.043 to 182.060 reserved for expansion]

**SUBCHAPTER D. TELEPHONE COMPANIES**

**§ 182.061. Definitions**

In this subchapter:

(1) "Telephone company" means a person who owns or operates a telephone line or a telephone in this state and charges for its use.

(2) "Business" means providing telephone service or leasing a telephone, telephone equipment, or telephone line.

[Acts 1981, 67th Leg., p. 1716, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 182.062. Imposition and Rate of Tax**

(a) A tax is imposed on each telephone company on the gross receipts from business done in this state.

(b) The tax rates are:

(1) 1.65 percent of the gross receipts from business done outside an incorporated city or town or in an incorporated city or town having a population of 2,500 or less;

(2) 1.925 percent of the gross receipts from business done in an incorporated city or town having a population of more than 2,500 but not more than 10,000; and

(3) 2.5025 percent of the gross receipts from business done in an incorporated city or town having a population of more than 10,000.

[Acts 1981, 67th Leg., p. 1716, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 182.063. Political Subdivisions**

No city or other political subdivision of this state may impose, on a telephone company taxed under Section 182.062 of this code, an occupation tax or any charge for the privilege of doing business.

[Acts 1981, 67th Leg., p. 1717, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 182.064. Subchapter Not Applicable**

(a) This subchapter does not apply to a telephone company owned and operated by a cooperative, non-profit, membership corporation.

(b) This subchapter does not:

(1) prohibit the collection by a city of a franchise tax in effect on October 31, 1936;

(2) prohibit the collection of ad valorem taxes; or

(3) affect any contracts made between a city and a franchise holder.

[Acts 1981, 67th Leg., p. 1717, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 182.065 to 182.080 reserved for expansion]

SUBCHAPTER E. TAX COLLECTIONS AND  
BUSINESS PERMITS

§ 182.081. Reports

(a) A person required to pay a tax under this chapter shall report to the comptroller on the last day of January, April, July, and October of each year.

(b) A report must include a statement of the gross receipts from business done, as defined in this chapter for each taxpayer, during the preceding quarterly period.

[Acts 1981, 67th Leg., p. 1717, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1379, ch. 284, § 10, eff. Sept. 1, 1983.]

§ 182.082. Tax Payments: Due Date

Except as provided in Section 182.083 of this code, the taxes imposed by this chapter are due and payable to the treasurer on the last day of January, April, July, and October of each year.

[Acts 1981, 67th Leg., p. 1717, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1379, ch. 284, § 10, eff. Sept. 1, 1983.]

§ 182.083. Payment of Tax if Business Begun  
After Beginning of Quarter

If a person taxed under this chapter begins business on or after the first day of the quarter, then in lieu of the gross receipts tax provided for in this chapter, the tax for that quarter is \$50, payable to the treasurer in advance.

[Acts 1981, 67th Leg., p. 1717, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 182.084. Addition Reports

The comptroller may require a person required to report under this chapter to supply additional or supplemental reports containing information necessary to compute the tax due.

[Acts 1981, 67th Leg., p. 1717, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 182.085. Forms

The comptroller shall prepare forms for use in making the reports required by this chapter.

[Acts 1981, 67th Leg., p. 1718, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 182.086. Permit Required; Form of Permit

(a) Each person taxed under this chapter must have a permit to transact business.

(b) The comptroller shall issue the permit in a form prescribed by the attorney general.

(c) A permit shows:

- (1) the name of the person to whom it is issued;
- (2) the business to be transacted; and
- (3) that the holder has complied with this chapter.

(d) The permit must be publicly displayed at the principal office of the person to whom it is issued.

[Acts 1981, 67th Leg., p. 1718, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 182.087. Application and Issuance of Permit

(a) The comptroller shall prescribe the form of the application for the permit to transact business.

(b) The application must show:

(1) to the satisfaction of the comptroller the facts required under Section 182.086 of this code; and

(2) that the applicant has paid the taxes required by this chapter or, if the applicant is the buyer of a going business, that the seller has paid all taxes due or to become due under this chapter.

(c) After determining that all taxes due under this chapter have been paid, the comptroller shall issue the permit to transact business.

(d) The permit expires on December 31 following the date of issuance.

(e) Repealed by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983.

[Acts 1981, 67th Leg., p. 1718, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983.]

§ 182.088. Suspension of Permit

(a) If taxes due under this chapter are not paid before the expiration of 30 days after the due date, the comptroller shall mail a written notice to the delinquent taxpayer at the last known address stating that:

(1) the tax is unpaid; and

(2) the comptroller will suspend the permit to transact business if the tax is not paid within 10 days of the date of the notice.

(b) The mailing of the notice is sufficient compliance with this law.

(c) If the tax and accrued penalties are not paid before the expiration of 15 days after the mailing of the notice, the comptroller shall:

(1) Note on the records that the permit to transact business of the delinquent taxpayer has been suspended, giving the date of suspension;

(2) immediately certify the suspension to the attorney general; and

(3) have published a notice of suspension of the permit in a daily or weekly newspaper published in the county of the delinquent taxpayer's business or, if there is no newspaper published in that county, in a daily newspaper with statewide circulation.

[Acts 1981, 67th Leg., p. 1718, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 182.089 to 182.100 reserved  
for expansion]



SUBCHAPTER F. PENALTIES

§ 182.101. Repealed by Acts 1983, 68th Leg., p. 457, ch. 93, § 15, eff. Sept. 1, 1983

§ 182.102. **Penalty for Failure to File Report or to Pay Tax**

(a) A person who fails to file a report as required by this chapter or who fails to pay a tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) The minimum penalty imposed by this section is \$1.

[Acts 1981, 67th Leg., p. 1719, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 452, ch. 93, § 5, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

§ 182.103. **Suits**

(a) The attorney general shall bring suits to collect penalties under this chapter.

(b) The courts of Travis County have concurrent jurisdiction of a violation under this chapter.

[Acts 1981, 67th Leg., p. 1719, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 182.104. **Transacting Business Without a Permit: Penalty**

(a) A person commits an offense if the person is required by Section 182.086 of this code to have a permit and the person transacts business without a valid permit.

(b) An offense under Subsection (a) of this section is punishable by a fine of not less than \$50 nor more than \$500. Each day on which a violation occurs is a separate offense.

[Acts 1981, 67th Leg., p. 1719, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 182.105 to 182.120 reserved for expansion]

SUBCHAPTER G. NATURE AND ALLOCATION OF TAX

§ 182.121. **Nature of Tax**

A tax imposed by this chapter is an occupation tax.

[Acts 1981, 67th Leg., p. 1719, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 182.122. **Allocation of Tax**

Revenues collected under this chapter are allocated:

- (1) one-fourth to the available school fund; and
- (2) three-fourths to the general revenue fund.

[Acts 1981, 67th Leg., p. 1719, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

SUBTITLE H. BUSINESS PERMIT TAXES

CHAPTER 191. MISCELLANEOUS OCCUPATION TAXES

SUBCHAPTER A. BROKERS AND FACTORS [REPEALED]

Sec.

191.001 to 191.003. Repealed.

SUBCHAPTER B. PISTOL DEALERS [REPEALED]

191.021 to 191.026. Repealed.

SUBCHAPTER C. SHIP BROKERS [REPEALED]

191.041 to 191.042. Repealed.

SUBCHAPTER D. BILLIARD TABLE OWNERS OR OPERATORS [REPEALED]

191.061 to 191.064. Repealed.

SUBCHAPTER E. OIL WELL SERVICE

- 191.081. Definition.
- 191.082. Tax Imposed.
- 191.083. Tax Rate.
- 191.084. Report and Tax Payment.
- 191.085. Record.
- 191.086. Penalty.
- 191.087. Failure to File Report or Pay Tax.
- 191.088. State Tax Lien.
- 191.089. Permit Required.

SUBCHAPTER F. TAX RECEIPT

- 191.101. Tax Receipt as Permit.
- 191.102. Display of Permit: Penalty.

SUBCHAPTER G. NATURE AND ALLOCATION OF TAX

- 191.121. Nature of Tax.
- 191.122. Allocation of Tax.

SUBCHAPTER A. BROKERS AND FACTORS [REPEALED]

§§ 191.001 to 191.003. Repealed by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983

Section 3 of the 1983 repealing act provides:

"A tax paid before the effective date of this Act in compliance with a law repealed by this Act is not refundable. The repeal of a tax by this Act does not affect the collection or enforcement of, or application of penalties for, taxes due before the effective date of this Act, and the former law is continued in effect for the collection and enforcement of those taxes only."

SUBCHAPTER B. PISTOL DEALERS  
[REPEALED]

§§ 191.021 to 191.026. Repealed by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983

SUBCHAPTER C. SHIP BROKERS  
[REPEALED]

§§ 191.041, 191.042. Repealed by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983

SUBCHAPTER D. BILLIARD TABLE OWNERS  
OR OPERATORS [REPEALED]

§§ 191.061 to 191.064. Repealed by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983

SUBCHAPTER E. OIL WELL SERVICE

§ 191.081. Definition

In this subchapter, "oil well service" means cementing the casing seat of an oil or gas well, shooting, fracturing, or acidizing the sands or other formations of the earth in an oil or gas well, or surveying or testing the sands or other formations or their contents in an oil or gas well by using instruments or equipment at least a part of which are located in the well bore when the survey or test is made.

[Acts 1981, 67th Leg., p. 1723, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 191.082. Tax Imposed

(a) A tax is imposed on each person who engages in the business of providing any oil well service for another for consideration and who:

(1) owns, controls, or furnishes the tools, instruments, and equipment used in providing the oil well service; or

(2) uses any chemical, electrical, or mechanical process in providing the service at any oil or gas well during and in connection with the drilling and completion, or reworking or reconditioning, of the well.

(b) The tax imposed by this subchapter does not apply to the business of drilling or reworking an oil or gas well or to a service incidental to that business performed by persons engaged in the business of drilling or reworking.

[Acts 1981, 67th Leg., p. 1723, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 191.083. Tax Rate

The rate of the tax imposed by this subchapter is 2.42 percent of the gross amount received for service after deduction for the reasonable value at the

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well of material used, consumed, or expended in or incorporated into the well.

[Acts 1981, 67th Leg., p. 1723, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 191.084. Report and Tax Payment

(a) A person subject to the tax shall report the amount received from taxable services during the preceding calendar month.

(b) The comptroller shall prescribe and furnish the form for the report.

(c) The person subject to the tax shall pay the tax to the comptroller at the comptroller's office in Austin on or before the 20th day of each month.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 191.085. Record

(a) A person subject to the tax shall keep a complete record of business transacted and any other information the comptroller requires.

(b) The person shall keep the record open for two years for inspection by the comptroller or the attorney general.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 191.086. Penalty

A person who violates this subchapter forfeits and shall pay to the state a penalty of not less than \$25 nor more than \$500. A separate offense is committed each day on which a violation occurs.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 191.087. Failure to File Report or Pay Tax

(a) If a person taxed under this subchapter fails to file a report required by this subchapter or to pay the tax imposed by this subchapter when due, the person forfeits five percent of the amount of tax due as a penalty. If the person then fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional penalty of five percent of the amount of the tax.

(b) The minimum penalty imposed by this section is \$1.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 452, ch. 93, § 6, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

**§ 191.088. State Tax Lien**

The taxes, penalties, interests, and costs that a person owes the state under this subchapter are secured by a preferred lien, first and prior to other existing liens, contract or statutory, legal or equitable, on all property of the person used in the person's business.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 191.089. Permit Required**

A person subject to the tax imposed by this subchapter shall acquire the permit required by Section 182.086 of this code. Application, issuance, and suspension of the permit are subject to Sections 182.087 and 182.088 of this code.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 191.090 to 191.100 reserved for expansion]

**SUBCHAPTER F. TAX RECEIPT**

**§ 191.101. Tax Receipt as Permit**

(a) The receipt from the treasurer for tax payment is the permit to do business unless a separate permit is required by law.

(b) A person may not receive a permit to do or continue to do business in this state until the person pays the tax imposed by this chapter.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 191.102. Display of Permit; Penalty**

(a) A person commits an offense if the person, without displaying the receipt for the tax imposed by this chapter, engages in a business taxed under this chapter.

(b) An offense under this section is a misdemeanor or punishable by a fine of not more than \$50.

[Acts 1981, 67th Leg., p. 1724, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 4769, ch. 840, § 2, eff. Aug. 29, 1983.]

[Sections 191.103 to 191.120 reserved for expansion]

**SUBCHAPTER G. NATURE AND ALLOCATION OF TAX**

**§ 191.121. Nature of Tax**

A tax imposed by this chapter is an occupation tax.

[Acts 1981, 67th Leg., p. 1725, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 191.122. Allocation of Tax**

One-fourth of the revenue collected under this chapter shall be deposited to the credit of the avail-

able school fund and three-fourths to the credit of the general revenue fund.

[Acts 1981, 67th Leg., p. 1725, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

**CHAPTER 192. QUOTATION SERVICES [REPEALED]**

**§§ 192.001 to 192.010. Repealed by Acts 1983, 68th Leg., p. 4769, ch. 840, § 1, eff. Aug. 29, 1983**

Section 3 of the 1983 repealing act provides:

"A tax paid before the effective date of this Act in compliance with a law repealed by this Act is not refundable. The repeal of a tax by this Act does not affect the collection or enforcement of, or application of penalties for, taxes due before the effective date of this Act, and the former law is continued in effect for the collection and enforcement of those taxes only."

**SUBTITLE I. SEVERANCE TAXES**

**CHAPTER 201. GAS PRODUCTION TAX**

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- 201.351. Delinquent Tax; Penalty.  
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201.353. Incomplete Records or Reports; Concealing Property Under Lien; Penalty.  
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## SUBCHAPTER I. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

- 201.401. Occupation Tax.  
201.402. Penalty Collected for Audits or Investigations.  
201.403. Tax Set Aside.  
201.404. Allocation of Revenue.

## SUBCHAPTER A. GENERAL PROVISIONS

## § 201.001. Definitions

In this chapter:

(1) "Casinghead gas" means gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) "Condensate" means liquid hydrocarbon that is or can be recovered from gas by a separator, but does not include liquid hydrocarbon recovered from gas by refrigeration or absorption and separated by a fractionating process.

(3) "First purchaser" means a person who purchases gas from a producer.

(4) "Gas" means natural gas, casinghead gas, or other gas taken from the earth or water, whether produced from a gas well or a well also producing oil, distillate or condensate or both, or other products.

(5) "Producer" means a person who takes gas from the earth or water, a person who owns, controls, manages, or leases a gas well, or a person who owns an interest, including a royalty interest, in gas or its value, whether the gas is produced by the person owning the interest or by another on his behalf by lease, contract, or other arrangement.

(6) "Production" or "gas produced" means the gross amount of gas taken from the earth or water as determined by meter readings that show 100 percent of the gas taken expressed in cubic feet.

(7) "Royalty interest" means an interest in mineral rights in a producing leasehold in the state, but does not include the interest of the person having the management and operation of a well.

(8) "Sour gas" means gas with more than 1½ grains of hydrogen sulfide per 100 cubic feet or more than 30 grains of sulphur per 100 cubic feet.

(9) "Subsequent purchaser" means a person who purchases gas from a person other than the producer of the gas.

(10) "Sweet gas" means gas other than sour gas or casinghead gas.

[Acts 1981, 67th Leg., p. 1728, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 201.002. Measurement of Volume of Gas

The provisions of Section 91.052 of the Standard Gas Measurement Law, Subchapter C, Chapter 91, Natural Resources Code, apply to this code.

[Acts 1982, 67th Leg., p. 1729, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.003 to 201.050 reserved for expansion]

## SUBCHAPTER B. TAX IMPOSED

## § 201.051. Tax Imposed

There is imposed a tax on each producer of gas.

[Acts 1981, 67th Leg., p. 1729, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 201.052. Rate of Tax

(a) The tax imposed by this chapter is at the rate of 7.5 percent of the market value of gas produced and saved in this state by the producer.

(b) The minimum tax rate on sweet and sour gas produced and saved in this state is  $\frac{12\frac{1}{2}}{1,500}$  of one cent of one cent for each 1,000 cubic feet.

[Acts 1981, 67th Leg., p. 1729, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 201.053. Gas Not Taxed

The tax imposed by this chapter does not apply to gas:

(1) injected into the earth in this state, unless sold for that purpose;

(2) produced from oil wells with oil and lawfully vented or flared; or

(3) used for lifting oil, unless sold for that purpose.

[Acts 1981, 67th Leg., p. 1729, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 201.054. Tax on Liquid Hydrocarbons

(a) There is imposed on each producer a tax on the market value of liquid hydrocarbons, other than condensate, recovered from gas produced in the state by a producer.

(b) The rate of the tax imposed by this section is the same as the rate of the tax imposed by Section 201.052 of this code.

[Acts 1981, 67th Leg., p. 1729, ch. 389, § 1, eff. Jan. 1, 1982.]

## § 201.055. Tax on Condensate

(a) There is imposed on each producer a tax measured by the amount of condensate recovered from gas produced in this state by a producer.

(b) The tax imposed by this section is at the same rate as the rate of the tax imposed on oil by Section 202.052 of this code.

[Acts 1981, 67th Leg., p. 1729, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.056 to 201.100 reserved for expansion]

**SUBCHAPTER C. DETERMINING VALUE**

**§ 201.101. Market Value**

The market value of gas is its value at the mouth of the well from which it is produced.

[Acts 1981, 67th Leg., p. 1730, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.102. Cash Sales**

If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts.

[Acts 1981, 67th Leg., p. 1730, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.103. Value if Consideration Includes Extracts**

If the consideration for the sale of gas includes products extracted from the gas, a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including a bonus or premium.

[Acts 1981, 67th Leg., p. 1730, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.104. Returned Cycle Gas**

(a) If gas is processed for its liquid hydrocarbon content and the residue gas is returned to a gas-producing formation by cycling methods, as distinguished from repressuring or pressure maintenance methods, the taxable value of the gas is three-fifths the value of all liquid hydrocarbons extracted, separated, and saved from the gas.

(b) The value of the liquid hydrocarbons for the purpose of this section is the highest posted price of crude oil in the field where the gas is produced. If no oil is produced in that field, the value is the highest posted price for crude oil in the nearest oil field.

(c) The value of the liquid hydrocarbons is determined when they are extracted and separated from gas and before they are absorbed, refined, or processed. The quantity of the liquid hydrocarbons is the yield from the gas at the processing plant.

(d) The valuation method prescribed by this section controls over the valuation methods described in Sections 201.102 and 201.103 of this code only in

circumstances in which Subsection (a) of this section applies.

[Acts 1981, 67th Leg., p. 1730, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.105. Value of Liquid Hydrocarbons Other Than Condensate**

The taxable value of liquid hydrocarbons other than condensate is the producer's total gross receipts for all liquid hydrocarbons, including condensate, recovered from gas produced by him less the taxable value of the condensate recovered from that gas.

[Acts 1981, 67th Leg., p. 1730, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.106. Value of Condensate**

The value of condensate for the purpose of computing the tax due on it is the prevailing price for condensate in the general area where it is recovered.

[Acts 1981, 67th Leg., p. 1730, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.107 to 201.150 reserved for expansion]

**SUBCHAPTER D. RECORDS**

**§ 201.151. Producer's Records**

A producer shall keep accurate records of all gas the producer produces. The records shall be kept in the state.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.152. Purchaser's Records**

A purchaser shall keep accurate records of all gas the purchaser purchases. The records shall be kept in the state.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.153 to 201.200 reserved for expansion]

**SUBCHAPTER E. REPORTS AND PAYMENTS**

**§ 201.201. Tax Due**

The tax imposed by this chapter is due at the office of the comptroller in Austin on the last day of each calendar month for gas produced and saved during the preceding calendar month.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982.]

**§ 201.2015. Estimated Tax Payments**

On August 15th of each odd-numbered calendar year, each person required to pay a tax under this chapter must remit a reasonable estimate of the tax liability for gas that has been and will be produced

and saved during the month of July. A reasonable estimate must be at least an amount equal to the tax due on the last day of July for gas produced and saved in June.

[Acts 1983, 68th Leg., p. 1377, ch. 284, § 7, eff. Sept. 1, 1983.]

#### § 201.202. Payment of Tax

The tax imposed by this chapter must be paid by legal tender or cashier's check payable to the state treasurer.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.203. Producer's Report

(a) On or before the last day of each calendar month, each producer shall file a report with the comptroller on forms prescribed by the comptroller. The report must contain the following information concerning gas produced during the preceding calendar month:

- (1) the gross amount of gas produced that is subject to the tax imposed by this chapter;
- (2) the leases from which the gas was produced;
- (3) the names and addresses of the first purchasers of the gas; and
- (4) other information the comptroller may reasonably require.

(b) If the report the producer is required to file shows additional tax due, the producer must pay the additional tax when he files the report. Notwithstanding any other provision of this code, if the producer fails to remit a reasonable estimate of the tax due in accordance with Section 201.2015 of this chapter, a penalty of 10 percent of the delinquent required reasonable estimate will be forfeited and due along with any additional tax due with the report specified in this section.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1378, ch. 284, § 8, eff. Sept. 1, 1983.]

#### § 201.2035. First Purchaser's Report

(a) On or before the last day of each calendar month, each first purchaser must file a report with the comptroller on forms prescribed by the comptroller. The report must contain the following information concerning gas purchased from a producer during the preceding calendar month:

- (1) the gross amount of gas purchased from each producer;
- (2) the price paid for the gas;
- (3) the leases from which the gas was produced; and
- (4) other information the comptroller may reasonably require.

(b) If the report the first purchaser is required to file shows any additional tax due, the first purchaser must pay the tax when he files the report. Notwithstanding any other provision of this code, if

the purchaser fails to remit a reasonable estimate of the tax due in accordance with Section 201.2015 of this chapter, a penalty of 10 percent of the delinquent required reasonable estimate will be forfeited and due along with any additional tax due with the report specified in this section.

[Acts 1983, 68th Leg., p. 1378, ch. 284, § 9, eff. Sept. 1, 1983.]

#### § 201.204. First Purchaser to Pay Tax

(a) A first purchaser shall pay the tax imposed by this chapter on gas that the first purchaser purchases from a producer and takes delivery on the premises where the gas is produced.

(b) A first purchaser shall withhold from payments to the producer the amount of the tax that the first purchaser is required to pay. This subsection does not affect a lease or contract between the state or a political subdivision of the state and a producer.

(c) Money withheld by a first purchaser under this section is held in trust for the use and benefit of the state and may not be commingled with other funds of the first purchaser.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.205. Tax Borne Ratably

The tax shall be borne ratably by all interested parties, including royalty interests. Producers or purchasers of gas, or both, are authorized and required to withhold from any payment due interested parties the proportionate tax due and remit it to the comptroller.

[Acts 1981, 67th Leg., p. 1731, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.206. Transfer of Ownership

(a) If a gas-producing lease is transferred or is to be transferred, the producer transferring the lease shall note the name and address of the producer acquiring the lease and the date of the transfer on the last report that covers the lease and that he is required by Section 201.203 of this code to file.

(b) If a gas-producing lease is transferred, the producer acquiring the lease shall note the date of the transfer and the name and address of the person from whom the lease was acquired on the first report that covers the lease and that he is required by Section 201.203 of this code to file.

[Acts 1981, 67th Leg., p. 1732, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.207 to 201.250 reserved for expansion]

### SUBCHAPTER F. LIABILITY FOR TAX

#### § 201.251. Liability of Producer and Purchaser

The tax imposed by this chapter is the primary liability of the producer and is a liability of the first

purchaser and each subsequent purchaser. Failure of the first purchaser to pay the tax does not relieve the producer or a subsequent purchaser from liability for the tax. A purchaser of gas produced in the state shall satisfy himself that the tax on that gas has been or will be paid by the person liable for the tax.

[Acts 1981, 67th Leg., p. 1732, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 201.252. **Producer's Remedy**

If a purchaser withholds the amount of the tax imposed by this chapter from payments to a producer for the sale of gas and fails to pay the tax as provided by this chapter, the producer may sue the purchaser to recover the amount of the tax withheld, penalties and interest that have accrued from failure to pay the tax, court costs, and reasonable attorney's fees.

[Acts 1981, 67th Leg., p. 1732, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.253 to 201.300 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

§ 201.301. **Investigations**

The comptroller may enter the premises of a taxpayer liable for a tax imposed by this chapter or any other premises necessary to determine tax liability in order to examine books or records of a person subject to a tax imposed by this chapter or to secure any information related to the enforcement of this chapter.

[Acts 1981, 67th Leg., p. 1732, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 201.302. **Audits**

(a) The comptroller shall employ auditors and other technical assistants to verify reports and investigate the affairs of producers and purchasers to determine whether the tax is properly reported and paid.

(b) A producer who has failed to pay the proper amount of tax, a penalty, or interest due is liable for the reasonable expenses incurred by representatives of the comptroller in the investigation or the reasonable value of their services. The amount for which the producer is liable under this subsection is an additional penalty.

[Acts 1981, 67th Leg., p. 1732, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 201.303. **Tax Lien**

(a) If a tax imposed by this chapter is delinquent or if interest or a penalty on a delinquent tax has not been paid, the state has a prior lien for the tax, penalty, and interest on all property and equipment used by the producer to produce gas.

(b) The lien may be enforced by a suit filed by the attorney general. Venue of the suit is in Travis County.

[Acts 1981, 67th Leg., p. 1733, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 201.304. **Suit for Taxes; Sworn Denial**

Rule 185, Texas Rules of Civil Procedure, applies to a suit by the attorney general for taxes imposed by this chapter if:

- (1) the attorney general files as an exhibit a report or audit of the taxpayer; and
- (2) the exhibit is supported by the comptroller's affidavit that the taxes shown to be due are past due and unpaid and that all payments and credits have been allowed.

[Acts 1981, 67th Leg., p. 1733, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.305 to 201.350 reserved for expansion]

SUBCHAPTER H. PENALTIES

§ 201.351. **Delinquent Tax; Penalty**

(a) A person who fails to pay the tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax within 30 days after the day on which the tax is due, the person forfeits an additional five percent.

(b) The minimum penalty provided by this section is \$1.

[Acts 1981, 67th Leg., p. 1733, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 453, ch. 93, § 7, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

§ 201.352. **Unlawful Removal of Gas**

On notice from the comptroller, no person may produce or remove natural or casinghead gas from a lease in this state if the owner or operator of the lease has failed to file a report as required by this chapter.

[Acts 1981, 67th Leg., p. 1733, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 201.353. **Incomplete Records or Reports; Concealing Property Under Lien; Penalty**

(a) A person commits an offense if the person:

(1) with intent to defraud the state, knowingly fails to keep a complete record that the person is required by this chapter to keep;

(2) knowingly fails to file a complete report on or before the day the person is required by this chapter to file the report; or

(3) with intent to defraud the state, conceals property or equipment that is under a lien authorized by Section 201.303 of this code.

(b) An offense under this section is a misdemeanor or punishable by:

(1) a fine of not less than \$100 nor more than \$1,000;

(2) confinement in county jail for not more than 12 months; or

(3) both a fine and confinement.

(c) In addition to the criminal penalty, a person is liable for a civil penalty of \$1,000 if the person:

(1) performs any act constituting an offense under Subsection (a) of this section;

(2) with intent to defraud the state, makes a false entry in any record the person is required by this chapter to keep;

(3) destroys, damages, or conceals a record the person is required by this chapter to keep;

(4) falsifies a report the person is required by this chapter to file; or

(5) violates any rule promulgated under this section.

[Acts 1981, 67th Leg., p. 1733, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.354. Collection of Civil Penalty

(a) The attorney general shall bring a suit for the collection of a penalty imposed by Section 201.353(c) of this code.

(b) Venue of a suit under this section is in the county where the violation occurs.

(c) A suit under this section may be joined with any other civil suit provided for by this chapter.

[Acts 1981, 67th Leg., p. 1734, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.355. General Penalty

(a) A person commits an offense if the person violates or fails to comply with any provision of this chapter.

(b) An offense under this section is a misdemeanor or punishable by a fine of not less than \$100 nor more than \$1,000. A separate offense is committed each day that a violation of a provision of this chapter continues.

[Acts 1981, 67th Leg., p. 1734, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 201.356 to 201.400 reserved for expansion]

### SUBCHAPTER I. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

#### § 201.401. Occupation Tax

The tax imposed by this chapter is an occupation tax.

[Acts 1981, 67th Leg., p. 1734, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.402. Penalty Collected for Audits or Investigations

A penalty collected for the expense or value of audits or investigations authorized by Section 201.302 of this code shall be deposited in the general revenue fund.

[Acts 1981, 67th Leg., p. 1734, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.403. Tax Set Aside

One-half of one percent of the tax collected under this chapter shall be set aside in the state treasury for the use of the comptroller to administer and enforce the provisions of this chapter, subject to appropriation by the legislature. Money set aside by this section that is not spent at the end of a fiscal year reverts proportionally to the other funds to which the taxes imposed by this chapter are paid.

[Acts 1981, 67th Leg., p. 1734, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 201.404. Allocation of Revenue

After deducting the amount required to be deposited by Section 201.403 of this code, the comptroller shall deposit one-fourth of the revenue collected from the tax imposed by this chapter to the credit of the available school fund and three-fourths to the general revenue fund.

[Acts 1981, 67th Leg., p. 1734, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

## CHAPTER 202. OIL PRODUCTION TAX

### SUBCHAPTER A. GENERAL PROVISIONS

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202.002. Production and Measurement of Oil.

202.003. Agreement to Pay Tax Not Impaired.

202.004. Inspection of Records and Reports.

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### SUBCHAPTER B. TAX IMPOSED

202.051. Tax Imposed.

202.052. Rate of Tax.

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### SUBCHAPTER C. RECORDS

202.101. Producer's Records.

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- 202.103. Subsequent Purchaser's Records.
- 202.104. Royalty Owner's Records.
- 202.105. Carrier's Records.

SUBCHAPTER D. PAYMENTS

- 202.151. Tax Due.
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SUBCHAPTER E. REPORTS

- 202.201. Producer's Report.
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SUBCHAPTER F. LIABILITY FOR TAX

- 202.251. Liability of Producer and Purchaser.
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SUBCHAPTER G. ENFORCEMENT AND PENALTIES

- 202.301. Delinquent Taxes: Penalty.
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- 202.304. Suit for Taxes; Sworn Denial.
- 202.305. Unlawful Removal of Oil.
- 202.306. Inspector Has Free Access.
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SUBCHAPTER H. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

- 202.351. Occupation Tax.
- 202.352. Tax Set Aside.
- 202.353. Allocation of Revenue.

SUBCHAPTER A. GENERAL PROVISIONS

§ 202.001. Definitions

In this chapter:

- (1) "Carrier" means a person who owns, operates, or manages a means of transporting oil.
- (2) "First purchaser" means a person who purchases crude oil from a producer.
- (3) "Oil" means crude oil or other oil taken from the earth, regardless of the gravity of the oil.
- (4) "Producer" means a person who takes oil from the earth or water in any manner, a person who owns, controls, manages, or leases an oil well, or a person who owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on his behalf by lease, contract, or any other arrangement.
- (5) "Royalty interest" means an interest in mineral rights in a producing leasehold in the state, but does not include the interest of a person having the management and operation of a well.

(6) "Subsequent purchaser" means a person who purchases oil from a person other than the producer of the oil, or a person operating a reclamation plant, topping plant, treating plant, refinery, or processing plant.

[Acts 1981, 67th Leg., p. 1736, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.002. Production and Measurement of Oil

(a) "Production" means the total gross amount of oil produced, including royalty and other interests.

(b) The amount of production shall be measured or determined by:

(1) tank tables compiled to show 100 percent of the capacity of the tanks without deduction for overage or losses in handling; or

(2) meter or other measuring devices that accurately determine the amount of production.

(c) If the amount of production has been measured or determined by a tank table compiled to show less than 100 percent of the full capacity of a tank, the amount must be raised to a basis of 100 percent.

(d) When measuring or determining the amount of production, a reasonable deduction may be made for basic sediment and water and a reasonable allowance may be made for correction of the temperature to 60 degrees Fahrenheit.

(e) This section does not authorize the use of metering devices for the measurement of oil on a well without the express permission of the operator of the well.

[Acts 1981, 67th Leg., p. 1736, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.003. Agreement to Pay Tax Not Impaired

This code does not impair a contract in which any person has agreed to pay any part of the tax imposed by this chapter. This code does not relieve any person of any contractual liability.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.004. Inspection of Records and Reports

A person required by this chapter to make and keep a record shall keep the record open for inspection by the comptroller or the attorney general at all times. Reports filed under this chapter are open to inspection by the attorney general.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.005. Employment of Auditors

The comptroller may employ auditors and supervisors to verify reports and investigate the affairs of producers and purchasers to determine whether the

tax imposed by this chapter is being properly reported and paid.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.006 to 202.050 reserved for expansion]

#### SUBCHAPTER B. TAX IMPOSED

##### § 202.051. Tax Imposed

There is imposed a tax on the production of oil.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 202.052. Rate of Tax

The tax imposed by this chapter is at the rate of 4.6 percent of the market value of oil produced in this state or 4.6 cents for each barrel of 42 standard gallons of oil produced in this state, whichever rate results in the greater amount of tax.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 202.053. Market Value

The market value of oil is the actual market value plus any bonus, premium, or other thing of value paid for the oil or that the oil will reasonably bring if lawfully produced.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.054 to 202.100 reserved for expansion]

#### SUBCHAPTER C. RECORDS

##### § 202.101. Producer's Records

A producer shall keep accurate records in the state. The records must show:

- (1) the counties in which the producer produces oil;
- (2) the names of the leases from which the producer produces oil;
- (3) the total number of barrels of oil produced from each lease;
- (4) for each sale or delivery to a first purchaser, the name and address of the first purchaser, the number of barrels sold or delivered, and the price received for the oil;
- (5) the amount and disposition of oil refined, processed, or used on the lease where it is produced;
- (6) the location and number of barrels in storage that the producer owns and has not sold; and
- (7) the name and address of each pipeline or refinery that is storing oil that the producer has not sold.

[Acts 1981, 67th Leg., p. 1737, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 202.102. First Purchaser's Records

A first purchaser shall keep accurate records in the state. The records must show:

- (1) the name and address of each producer from which the first purchaser buys oil;
- (2) for each producer, the counties where the oil is produced;
- (3) for each producer, the name of the lease from which the oil is produced;
- (4) the number of barrels of oil purchased from each producer and the price paid each producer for the oil;
- (5) the number of barrels purchased and used, refined, or processed by the first purchaser; and
- (6) for each sale to a subsequent purchaser, the name and address of the subsequent purchaser, the number of barrels sold, and the price received for the oil.

[Acts 1981, 67th Leg., p. 1738, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 202.103. Subsequent Purchaser's Records

A subsequent purchaser shall keep accurate records in the state. The records must show:

- (1) the name and address of each person who sells oil to the subsequent purchaser, the number of barrels sold, the price paid to each seller, and the date of each sale;
- (2) the disposition of all oil purchased by the subsequent purchaser;
- (3) the number of barrels of oil used, refined, or processed by the subsequent purchaser; and
- (4) the name and address of each person who buys oil from the subsequent purchaser, the number of barrels sold or delivered to each buyer, the price received for the oil from each buyer, and the date of the sale or delivery.

[Acts 1981, 67th Leg., p. 1738, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 202.104. Royalty Owner's Records

The owner of a royalty interest shall keep:

- (1) a record of all money received as royalty from each producing leasehold in the state; and
- (2) a copy of all settlement sheets furnished by a purchaser or operator or other statement showing the number of barrels of oil for which a royalty was received and the amount of tax deducted.

[Acts 1981, 67th Leg., p. 1738, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 202.105. Carrier's Records

A carrier shall keep accurate monthly records of oil the carrier transports for hire, for itself or for its owners. The records shall be kept within the state and must show, for each shipment:

- (1) the date the oil was received;
- (2) the number of barrels of oil received;
- (3) the person from whom the oil was received;

- (4) the point of delivery;
- (5) the person to whom the oil was delivered; and
- (6) the manner of transportation.

[Acts 1981, 67th Leg., p. 1738, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.106 to 202.150 reserved for expansion]

SUBCHAPTER D. PAYMENTS

§ 202.151. Tax Due

The tax imposed by this chapter is due at the office of the comptroller on the 25th day of each calendar month for oil produced during the preceding calendar month.

[Acts 1981, 67th Leg., p. 1739, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.1515. Estimated Tax Payments

On August 15th of each odd-numbered calendar year, each person required to pay a tax under this chapter must remit a reasonable estimate of the tax liability for oil that has been produced during the month of July. A reasonable estimate must be at least an amount equal to the tax due on July 25th for oil produced in June.

[Acts 1983, 68th Leg., p. 1375, ch. 284, § 1, eff. Sept. 1, 1983.]

§ 202.152. Payment of Tax

The tax imposed by this chapter must be paid by legal tender or cashier's check payable to the state treasurer.

[Acts 1981, 67th Leg., p. 1739, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.153. First Purchaser to Pay Tax

(a) A first purchaser shall pay the tax imposed by this chapter on oil that the first purchaser purchases from a producer and takes delivery on the premises where the oil is produced.

(b) A first purchaser shall withhold from payments to the producer the amount of tax that the first purchaser is required by Subsection (a) of this section to pay. This subsection does not affect a lease or contract between the state or a political subdivision of the state and a producer.

[Acts 1981, 67th Leg., p. 1739, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.154. Producer to Pay Tax on Oil Not Sold

If the producer does not sell oil produced in the same month it is produced, the producer shall pay the tax imposed by this chapter as if the oil were sold that month. In such a case, the working

interest operator may pay the tax and deduct it from the interest of other interest holders.

[Acts 1981, 67th Leg., p. 1739, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.155. Purchaser to Pay Tax on Oil From Property Under Legal Constraint

(a) A purchaser shall pay the tax imposed by this chapter on oil purchased from property in bankruptcy, receivership, covered by an assignment, or subject to a legal proceeding.

(b) The purchaser shall withhold the amount of tax required to be paid by Subsection (a) of this section from payments to the producer, trustee, assignee, or other person claiming the payments and from payments the purchaser impounds or places in escrow.

(c) The purchaser is not liable for the amount of tax paid as required by this section to any claimant of payments for the purchase of oil.

[Acts 1981, 67th Leg., p. 1739, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.156. Tax Borne Ratably

The tax shall be borne ratably by all interested parties, including royalty interests. Producers or purchasers of oil, or both, are authorized and required to withhold from any payment due interested parties the proportionate amount of tax due.

[Acts 1981, 67th Leg., p. 1739, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.157 to 202.200 reserved for expansion]

SUBCHAPTER E. REPORTS

§ 202.201. Producer's Report

(a) On or before the 25th day of each calendar month, each producer or his authorized agent shall file a report with the comptroller. The report must contain the following information concerning oil produced during the preceding calendar month:

- (1) the number of barrels of oil produced;
- (2) the counties in which oil was produced;
- (3) the names of the leases from which the oil was produced;
- (4) the name and address of each first purchaser of the oil;
- (5) the price received for the oil from each first purchaser; and
- (6) other information the comptroller may reasonably require.

(b) If the report the producer is required to file shows additional tax due, the producer must pay the additional tax when he files the report. Notwithstanding any other provision of this code, if the producer fails to remit a reasonable estimate of the tax due in accordance with Section 202.1515 of this chapter, a penalty of 10 percent of the delinquent required reasonable estimate will be forfeited and

due along with any additional tax due with the report specified in this section.

[Acts 1981, 67th Leg., p. 1740, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1375, ch. 284, § 2, eff. Sept. 1, 1983.]

#### § 202.202. First Purchaser's Report

(a) On or before the 25th day of each calendar month, each first purchaser or his authorized agent shall file a report with the comptroller. The report must contain the following information concerning oil purchased from a producer during the preceding calendar month:

- (1) the number of barrels of oil purchased from each producer;
- (2) the price paid each producer for the oil;
- (3) the name and address of each producer;
- (4) the counties in which the oil was produced;
- (5) the names of the leases from which the oil was produced; and
- (6) other information the comptroller may reasonably require.

(b) If the report the first purchaser is required to file shows additional tax due, the first purchaser must pay the additional tax when he files the report. Notwithstanding any other provision of this code, if the first purchaser fails to remit a reasonable estimate of the tax due in accordance with Section 202.1515 of this chapter, a penalty of 10 percent of the delinquent required reasonable estimate will be forfeited and due along with any additional tax due with the report specified in this section.

[Acts 1981, 67th Leg., p. 1740, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1376, ch. 284, § 3, eff. Sept. 1, 1983.]

§ 202.203. Repealed by Acts 1983, 68th Leg., p. 1377, ch. 284, § 4, eff. Sept. 1, 1983

#### § 202.204. Reports of Carrier

A carrier shall provide information and file reports on the movements of oil if requested by the comptroller as often as required by the comptroller.

[Acts 1981, 67th Leg., p. 1740, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 202.205. Transfer of Ownership

(a) If an oil-producing lease is transferred, or is to be transferred, the producer transferring the lease shall note the name and address of the producer acquiring the lease and the date of the transfer on the last report covering the lease that he is required by Section 202.201 of this code to file.

(b) If an oil-producing lease is transferred, the producer acquiring the lease shall note the date of the transfer and the name and address of the person from whom the lease was acquired on the first

report covering the lease that he is required by Section 202.201 of this code to file.

[Acts 1981, 67th Leg., p. 1740, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.206 to 202.250 reserved for expansion]

### SUBCHAPTER F. LIABILITY FOR TAX

#### § 202.251. Liability of Producer and Purchaser

The tax imposed by this chapter is the primary liability of the producer and is a liability of the first purchaser and each subsequent purchaser. Failure of the first purchaser to pay the tax does not relieve the producer or a subsequent purchaser from liability for the tax. A purchaser of oil produced in the state shall satisfy himself that the tax on that oil has been or will be paid by the person liable for the tax.

[Acts 1981, 67th Leg., p. 1741, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 202.252. Producer's Remedy

If a purchaser withholds the amount of the tax imposed by this chapter from payments to a producer for the sale of oil and fails to pay the tax as provided by this chapter, the producer may sue the purchaser to recover the amount of the tax withheld, penalties and interest that have accrued from failure to pay the tax, court costs, and reasonable attorney's fees.

[Acts 1981, 67th Leg., p. 1741, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.253 to 202.300 reserved for expansion]

### SUBCHAPTER G. ENFORCEMENT AND PENALTIES

#### § 202.301. Delinquent Taxes: Penalty

(a) A person who fails to pay the tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax within 30 days after the day on which the tax is due, the person forfeits an additional five percent.

(b) The minimum penalty under this section is \$1.

[Acts 1981, 67th Leg., p. 1741, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 453, ch. 93, § 8, eff. Sept. 1, 1983.]

Section 16(e) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

§ 202.302. Tax Lien

The state has a prior and preferred lien for the amount of the taxes, penalties, and interest imposed by this chapter on:

- (1) the oil to which the tax applies that is possessed by the producer, first purchaser, or subsequent purchaser;
- (2) the leasehold interest, oil rights, the value of oil rights, and other interests, including oil produced and oil runs, owned by a person liable for the tax;
- (3) equipment, tools, tanks, and other implements used on the lease from which the oil is produced; and
- (4) any other property not exempt from forced sale owned by the person liable for the tax.

[Acts 1981, 67th Leg., p. 1741, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.303. Forced Sale by Officer

(a) A peace officer may levy on oil for which the tax imposed by this chapter is due and unpaid by notice to the owner or person in charge of the oil.

(b) After notice to the owner or person in charge, the peace officer shall post a notice at the site of the oil that the oil will be sold to the highest bidder 10 days after the notice has been posted.

(c) After the notice has been posted for 10 days, the peace officer shall sell the oil to the highest bidder.

(d) The peace officer, except a ranger, may deduct 10 percent of the proceeds of the sale of the oil as his commission. The officer shall forward the balance, up to the amount of tax due, to the comptroller. The officer shall deliver any proceeds in excess of the tax due and the officer's commission, if any, to the owner of the oil.

[Acts 1981, 67th Leg., p. 1742, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.304. Suit for Taxes; Sworn Denial

Rule 185, Texas Rules of Civil Procedure, applies to a suit by the attorney general for taxes imposed by this chapter if:

- (1) the attorney general files as an exhibit a report or audit of the taxpayer; and
- (2) the exhibit is supported by the comptroller's affidavit that the taxes shown to be due are past due and unpaid and that all payments and credits have been allowed.

[Acts 1981, 67th Leg., p. 1742, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.305. Unlawful Removal of Oil

On notice from the comptroller, no person may remove oil from a lease in this state if the owner or

operator of the lease has failed to file a report as required by this chapter.

[Acts 1981, 67th Leg., p. 1742, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.306. Inspector Has Free Access

A person appointed by the Railroad Commission of Texas and holding the commission's certificate authorizing him to inspect oil wells, oil leases, pipelines, or railroad cars or tanks has the right of free access at all times to the wells, leases, pipelines, railroad cars and tanks, and motortruck tanks for the purpose of inspecting the production or transportation of oil.

[Acts 1981, 67th Leg., p. 1742, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.307. Incomplete Records or Reports; Concealing Property Under Lien; Penalty

(a) A person commits an offense if the person:

- (1) with intent to defraud the state, knowingly fails to keep a complete record that he is required by this chapter to keep;
- (2) knowingly fails to file a complete report that he is required by this chapter to file;
- (3) with intent to defraud the state, conceals property or equipment that is under a lien authorized by Section 202.302 of this code; or
- (4) fails or refuses to permit the comptroller or attorney general to inspect a record or report required by this chapter.

(b) An offense under this section is a misdemeanor or punishable by:

- (1) a fine of not less than \$25 nor more than \$5,000;
- (2) confinement in county jail for not less than one month nor more than six months; or
- (3) both a fine and confinement.

[Acts 1981, 67th Leg., p. 1742, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 202.308 to 202.350 reserved for expansion]

SUBCHAPTER H. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

§ 202.351. Occupation Tax

The tax imposed by this chapter is an occupation tax.

[Acts 1981, 67th Leg., p. 1743, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 202.352. Tax Set Aside

One-half of one percent of the tax collected under this chapter shall be deposited in the state treasury for the use of the comptroller to administer and enforce the provisions of this chapter, to be expended in the amounts and for the purposes prescribed in the General Appropriations Act. Money deposit-

ed under this section that is not spent at the end of a fiscal year reverts proportionally to the other funds to which the tax imposed by this chapter is paid.

[Acts 1981, 67th Leg., p. 1743, ch. 389, § 1, eff. Jan. 1, 1982.]

#### § 202.353. Allocation of Revenue

After deducting the amount required to be deposited by Section 202.352 of this code, the comptroller shall deposit one-fourth of the revenue collected from the tax imposed by this chapter to the credit of the available school fund and three-fourths to the general revenue fund.

[Acts 1981, 67th Leg., p. 1743, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

### CHAPTER 203. SULPHUR PRODUCTION TAX

#### SUBCHAPTER A. TAX IMPOSED

- Sec.  
203.001. Producer.  
203.002. Tax Imposed.  
203.003. Rate of Tax.

#### SUBCHAPTER B. RECORDS, PAYMENTS, AND REPORTS

- 203.051. Producer's Records.  
203.052. Producer's Reports.  
203.053. When Tax Due.

#### SUBCHAPTER C. ENFORCEMENT AND PENALTIES

- 203.101. Delinquent Tax Penalty.  
203.102. Failure to Keep Records: Penalty.

#### SUBCHAPTER D. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

- 203.151. Occupation Tax.  
203.152. Allocation of Revenue.

#### SUBCHAPTER A. TAX IMPOSED

##### § 203.001. Producer

In this chapter, "producer" means a person who owns, controls, manages, leases, or operates a sulphur mine, well, or shaft, or who produces sulphur by any method, system, or manner.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 203.002. Tax Imposed

There is imposed a tax on each producer of sulphur.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 203.003. Rate of Tax

The tax imposed by this chapter is at the rate of \$1.03 a long ton or fraction of a long ton of sulphur produced in this state.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 203.004 to 203.050 reserved for expansion]

#### SUBCHAPTER B. RECORDS, PAYMENTS, AND REPORTS

##### § 203.051. Producer's Records

(a) A producer shall keep a complete record of all sulphur he produces in this state. A producer may destroy a record required by this section three years after the last entry in the record.

(b) The record shall be open at all times to inspection by the comptroller and the attorney general.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 203.052. Producer's Reports

(a) On the first day of each January, April, July, and October each producer shall file a report with the comptroller on forms prescribed by the comptroller. The report must show the total amount of sulphur produced in the state by the person during the calendar quarter next preceding the day the report is due.

(b) A producer shall file other information or reports with the comptroller that the comptroller may reasonably require.

(c) The report shall be signed by the person making the report. If the person is not an individual, the report shall be signed by the president, secretary, or other authorized officer.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982.]

##### § 203.053. When Tax Due

The tax imposed by this chapter for each quarter is due at the time that the report required by Section 203.052 of this code is required to be filed for the quarter. Payment shall be to the treasurer.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 203.054 to 203.100 reserved for expansion]

#### SUBCHAPTER C. ENFORCEMENT AND PENALTIES

##### § 203.101. Delinquent Tax Penalty

(a) A producer who fails to file a report as required by this chapter or who fails to pay the tax imposed by this chapter when due forfeits five percent of the amount due as a penalty, and if the producer fails to file the report or pay the tax

within 30 days after the day on which the tax or report is due, the producer forfeits an additional five percent.

(b) The minimum penalty under this section is \$1.

(c) The attorney general, or a district or county attorney at the direction of the attorney general, shall bring suit in the name of the state to recover a delinquent tax imposed by this chapter and penalties and interest that have accrued from failure to pay the tax.

[Acts 1981, 67th Leg., p. 1744, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 454, ch. 93, § 9, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

§ 203.102. Failure to Keep Records: Penalty

(a) A person who fails to keep a record that he is required by this chapter to keep shall forfeit to the state a penalty of not less than \$500 nor more than \$5,000.

(b) A person is subject to a separate penalty for each 10 days that he fails to keep a record that he is required by this chapter to keep.

[Acts 1981, 67th Leg., p. 1745, ch. 389, § 1, eff. Jan. 1, 1982.]

[Sections 203.103 to 203.150 reserved for expansion]

SUBCHAPTER D. CLASSIFICATION OF TAX AND ALLOCATION OF REVENUE

§ 203.151. Occupation Tax

The tax imposed by this chapter is an occupation tax.

[Acts 1981, 67th Leg., p. 1745, ch. 389, § 1, eff. Jan. 1, 1982.]

§ 203.152. Allocation of Revenue

One-fourth of the revenue collected from the tax imposed by this chapter shall be deposited to the credit of the available school fund and three-fourths to the general revenue fund.

[Acts 1981, 67th Leg., p. 1745, ch. 389, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(h), eff. Jan. 1, 1982.]

SUBTITLE J. INHERITANCE TAX

CHAPTER 211. INHERITANCE TAXES

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

Sec.

- 211.001. Definitions
- 211.002. Day of Death of Presumed Decedent.
- 211.003. References to Internal Revenue Code.

SUBCHAPTER B. INHERITANCE TAXES: FEDERAL ESTATE TAX CREDIT AND GENERATION-SKIPPING TRANSFER TAX CREDIT

- 211.051. Tax on Property of Resident.
- 211.052. Tax on Property of Nonresident.
- 211.053. Tax on Property of Alien.
- 211.054. Tax on Property Included in Generation-Skipping Transfer.
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- 211.101. Payment by Personal Representative.
- 211.102. Day on Which Payment is Due.
- 211.103. Postponement of Day on Which Payment is Due.
- 211.104. Report of Determination of Federal Tax.
- 211.105. Date Due of Taxes on Generation-Skipping Transfers.
- 211.106. Returns.
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- 211.109. Compromise Agreement on Domicile.
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- 211.201. Transfer of Property Before Tax is Paid.
- 211.202 to 211.207. Repealed.

SUBCHAPTER E. ENFORCEMENT

- 211.251. Comptroller's Authority to Examine Books and Other Property.
- 211.252 to 211.257. Repealed.
- 211.258. Penalty for Failure to Pay Tax or for Late Payment.
- 211.259. Interest on Taxes.
- 211.260, 211.261. Renumbered.
- 211.262. Repealed.

SUBCHAPTER F. DISPOSITION OF REVENUE

- 211.301. General Revenue Fund.

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

*Former chapter 211, Inheritance and Estate Tax, derived from Acts 1981, 67th Leg., p. 1748, ch. 389, § 1, was revised by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a).*

§ 211.001. Definitions

In this chapter:

- (1) "Alien" means a decedent who, at the time of the decedent's death, was not domiciled in

Texas or any other state of the United States and was not a citizen of the United States.

(2) "Death tax" means an estate, inheritance, legacy, or succession tax.

(3) "Decedent" means a deceased natural person.

(4) "Federal credit" means the maximum amount of the credit for state death taxes allowable under Section 2011, Internal Revenue Code,<sup>1</sup> and, in the case of an alien, under Section 2102, Internal Revenue Code.<sup>2</sup>

(5) "Federal estate tax" means the tax payable to the federal government under Subtitle B, Chapter 11, Internal Revenue Code.<sup>3</sup>

(6) "Federal generation-skipping transfer tax" means the tax payable to the federal government under Subtitle B, Chapter 13, Internal Revenue Code.<sup>4</sup>

(7) "Federal tax" means the federal estate tax and the federal generation-skipping transfer tax.

(8) "Generation-skipping transfer" means a transfer for which a credit for state taxes is allowable under Section 2602(c)(5)(C), Internal Revenue Code.<sup>5</sup>

(9) "Generation-skipping transfer tax credit" means the maximum amount of the credit for state death taxes allowable under Section 2602(c)(5)(C), Internal Revenue Code.

(10) "Gross estate" means the gross estate as defined by Sections 2031 through 2045, Internal Revenue Code,<sup>6</sup> and, in the case of an alien, by Section 2103, Internal Revenue Code.<sup>7</sup>

(11) "Nonresident" means a decedent, other than an alien decedent, who was not domiciled in Texas at the time of the decedent's death.

(12) "Personal representative" means an executor, independent executor, administrator, temporary administrator, trustee, or another person administering the affairs of a decedent's estate.

(13) "Resident" means a decedent who was domiciled in Texas on his date of death.

(14) "Value" means value as finally determined and used for purposes of computing the federal tax.

(15) "Will" includes a codicil and includes a testamentary instrument that appoints an executor or that revokes another will.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 2011.

<sup>2</sup> 26 U.S.C.A. § 2012.

<sup>3</sup> 26 U.S.C.A. § 2101 et seq.

<sup>4</sup> 26 U.S.C.A. § 2611 et seq.

<sup>5</sup> 26 U.S.C.A. § 2602(c)(5)(C).

<sup>6</sup> 26 U.S.C.A. §§ 2031 to 2045.

<sup>7</sup> 26 U.S.C.A. § 2103.

The amendment of this chapter by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), was made to conform to the amendment, repeal or addition of various provisions of Taxation—General, art. 14.00A, et seq. by Acts 1981, 67th Leg., p. 3291, ch. 862, §§ 1 to 6, eff. Sept. 1, 1981. Section 7 of Acts 1981, 67th Leg., p. 3294, ch. 862, provides:

"(a) This Act takes effect on September 1, 1981, and applies to the estates of decedents who die on or after September 1, 1981.

"(b) The inheritance taxes imposed by Chapter 14, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as in effect on August 31, 1981, apply to the estates of decedents who die before September 1, 1981, and those taxes shall be reported, collected, enforced, and paid as though this Act were not in effect."

Section 6(b) of Acts 1981, 67th Leg., p. 2770, ch. 752, provides:

"Section 7, H.B. 325, 67th Legislature, Regular Session, 1981 [ch. 862], is not repealed by this Act. Section 7 of H.B. 325 applies to the conforming amendments made by this Act in the same manner that it applied to H.B. 325."

#### § 211.002. Day of Death of Presumed Decedent

If a court enters a final decree presuming a missing person to be dead, the day of the person's death for the purposes of this chapter is the day on which the court enters the decree establishing the fact of death regardless of the presumed day of death established by the decree.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

#### § 211.003. References to Internal Revenue Code

A citation of or a reference to a subtitle, a chapter, or a section of the Internal Revenue Code of 1954<sup>1</sup> includes that subtitle, chapter, or section as it exists on September 1, 1981, or as amended after that date and also includes any other provision of the Internal Revenue Code enacted after September 1, 1981, that is similar to or a replacement of the subtitle, chapter, or section cited or referred to.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. § 1 et seq.

[Sections 211.004 to 211.050 reserved for expansion]

### SUBCHAPTER B. INHERITANCE TAXES: FEDERAL ESTATE TAX CREDIT AND GENERATION-SKIPPING TRANSFER TAX CREDIT

#### § 211.051. Tax on Property of Resident

(a) A tax equal to the amount of the federal credit is imposed on the transfer at death of the property of every resident.

(b) If the estate of a resident is subject to a death tax imposed by another state or states for which the federal credit is allowable, the amount of the tax due under this section is reduced by the lesser of:

(1) the amount of the death tax paid the other state or states and that is allowable as the federal credit; or

(2) an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the resident's gross estate less the value of the property of a resident, as defined by Section (c) of this section, that is included in the gross estate and the denominator of which is the value of the resident's gross estate.



(c) Property of a resident includes real property having an actual situs in this state whether or not held in trust; tangible personal property having an actual situs in this state; and all intangible personal property, wherever the notes, bonds, stock certificates, or other evidence, if any, of the intangible personal property may be physically located or wherever the banks or other debtors of the decedent may be located or domiciled; except that real property in a personal trust is not taxed if the real property has an actual situs outside this state.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

**§ 211.052. Tax on Property of Nonresident**

(a) A tax is imposed on the transfer at death of the property located in Texas of every nonresident.

(b) The tax is an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Texas that is included in the gross estate and the denominator of which is the value of the nonresident's gross estate.

(c) Property located in Texas of a nonresident includes real property having an actual situs in this state whether or not held in trust and tangible personal property having an actual situs in this state, but intangibles that have acquired an actual situs in this state are not taxable.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

**§ 211.053. Tax on Property of Alien**

(a) A tax is imposed on the transfer at death of the property located in Texas of every alien.

(b) The tax is an amount determined by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Texas that is included in the gross estate and the denominator of which is the value of the alien's gross estate.

(c) Property located in Texas of an alien includes real property having an actual situs in this state whether or not held in trust; tangible personal property having an actual situs in this state; and intangible personal property if the physical evidence of the property is located within this state or if the property is directly or indirectly subject to protection, preservation, or regulation under the law of this state, to the extent that the property is included in the decedent's gross estate.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

**§ 211.054. Tax on Property Included in Generation-Skipping Transfer**

(a) A tax is imposed on every generation-skipping transfer.

(b) The tax is an amount determined by multiplying the generation-skipping transfer tax credit by a

fraction, the numerator of which is the value of the property located in Texas included in the generation-skipping transfer and the denominator of which is the value of all property included in the generation-skipping transfer.

(c) Property located in Texas includes real property having an actual situs in this state whether or not held in trust; tangible personal property having an actual situs in this state; and tangible personal property owned by a trust having its principal place of administration in this state at the time of the generation-skipping transfer.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

**§ 211.055. Maximum Tax**

The amount of taxes imposed by this chapter, when added to the federal tax as finally assessed and determined, may not exceed the amount of the federal tax which, without application of this chapter and the federal credit and the generation-skipping transfer tax credit to which it refers, would otherwise be payable to the federal government under Subtitle B, Chapters 11, and 13, Internal Revenue Code.<sup>1</sup>

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

<sup>1</sup> 26 U.S.C.A. §§ 2101 et seq. and 2601 et seq.

**§ 211.056. Cooperation with Internal Revenue Service**

(a) The comptroller shall confer with the Internal Revenue Service of the United States to determine the value of a decedent's estate that is located in this state and that is valued by the United States for tax purposes.

(b) The comptroller shall cooperate with the Internal Revenue Service on matters relating to a decedent's estate located in this state. The comptroller may exchange information with the service about these matters.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

[Sections 211.057 to 211.100 reserved for expansion]

**SUBCHAPTER C. COLLECTION AND PAYMENT OF TAX**

**§ 211.101. Payment by Personal Representative**

The personal representative of a decedent's estate shall pay to the comptroller a tax determined under this chapter on the estate.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

**§ 211.102. Day on Which Payment is Due**

Payment of a tax imposed by Section 211.051, 211.052, or 211.053 of this code on a decedent's

estate is due nine months after the day of the decedent's death.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

#### § 211.103. Postponement of Day on Which Payment is Due

(a) If the date of the filing of the federal estate or generation-skipping transfer tax return or the date of payment of the federal estate or generation-skipping transfer tax is extended by the Internal Revenue Service, the filing of the return required by Section 211.106 of this code and the tax imposed by Section 211.051, 211.052, 211.053, or 211.054 of this code are due on the respective dates specified by the Internal Revenue Service in granting any request for extension. The personal representative of the estate shall notify the comptroller within 30 days after an extension granted by the Internal Revenue Service.

(b) If an extension request is denied by the Internal Revenue Service, the return required under this chapter must be filed based on the best information available at that time. The return must be filed and any tax and interest estimated to be due must be paid within 10 days after the date of the denial to avoid the imposition of penalties under this chapter.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 439, ch. 90, § 1, eff. Sept. 1, 1983.]

#### § 211.104. Report of Determination of Federal Tax

Within 30 days after receiving notice or information of the final assessment and determination of the value of the taxable estate assessed and determined by the federal government for the purpose of fixing federal estate taxes on that estate, the personal representative shall make to the comptroller a report of the value of the estate as so fixed and determined. The report shall be made in a form and contain information as the comptroller directs.

[Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

Former § 211.104 was renumbered as § 211.107 by Acts 1981, 67th Leg., 1st C.S., p. 190, ch. 17, art. 2, § 1.

#### § 211.105. Date Due of Taxes on Generation-Skipping Transfers

The taxes on generation-skipping transfers are due and payable at the same time as the federal tax on generation-skipping transfers.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 440, ch. 90, § 2, eff. Sept. 1, 1983.]

#### § 211.106. Returns

A payment shall be accompanied by a copy of the federal estate or generation-skipping transfer tax return filed with the Internal Revenue Service and the Texas tax return containing any information the comptroller considers necessary for the enforcement of this chapter. In the event no federal estate or generation-skipping transfer tax has been paid or is due and no federal estate or generation-skipping transfer tax return must be filed, the filing of a Texas tax return is not required by this chapter.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 441, ch. 90, § 3, eff. Sept. 1, 1983.]

#### § 211.107. Receipt for Payment

The comptroller shall issue a receipt for payment of a tax imposed by this chapter. The comptroller shall deliver the receipt to the person making the payment or to the person's attorney of record.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; renumbered from § 211.104 by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

Former § 211.107 was renumbered as § 211.108 and amended by Acts 1981, 67th Leg., 1st C.S., p. 190, ch. 17, art. 2, § 1.

#### § 211.108. Personal Liability

Any person acquiring any property subject to taxation under this chapter, to the extent of the value of all property so acquired, shall be personally liable for the tax imposed by this chapter and be charged with notice of the existence of all of the unpaid taxes, penalties, interest, and costs.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; renumbered from § 211.107 and amended by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

A former § 211.108, relating to discharge of liability of personal representative, added by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982, was deleted by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.

#### § 211.109. Compromise Agreement on Domicile

(a) If the comptroller claims that a decedent was domiciled in this state at the time of death and a taxing authority of another state claims that the decedent was domiciled in that state at the time of death, the comptroller may agree in writing to a compromise with the other taxing authority and the personal representative of the decedent's estate.

(b) The compromise agreement shall set an amount that is accepted by the comptroller in satisfaction of the tax that is determined under this chapter on the decedent's estate and in satisfaction of any related penalty or interest imposed under

this chapter before the agreement takes effect. The agreement shall set the amount that the other taxing authority accepts in satisfaction of a death tax, penalty, or interest.

(c) To be valid, the agreement must be approved by the attorney general.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

§ 211.110. Forms

The comptroller shall prescribe a form for a tax return or report required by this chapter and shall prescribe other forms that request information necessary for the comptroller to collect the taxes imposed by this chapter.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; renumbered from § 211.155 Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.]

[Sections 211.111 to 211.200 reserved for expansion]

SUBCHAPTER D. TRANSFER OR DELIVERY OF PROPERTY AFTER DECEDENT'S DEATH

§ 211.201. Transfer of Property Before Tax is Paid

(a) If any personal representative of a decedent's estate transfers in whole or in part any of a decedent's property to any person without having paid the tax, penalty, and interest due under this chapter, the personal representative is personally liable for the tax, penalty, and interest to the extent of the value of the property transferred.

(b) A corporation, bank, stock transfer agent, safe deposit institution or other depository or institution, or person in actual or constructive possession of any property of the decedent as agent of the decedent or custodian of the property or any similar relationship such as debtor, bailor, or lessor (other than a personal representative, spouse, transferee, trustee, person in possession of property by reason of the exercise or release of a power of appointment, legatee, devisee, heir, or beneficiary who has received property) shall not be liable for any tax, penalty, or interest imposed by this chapter.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 441, ch. 90, § 4, eff. Sept. 1, 1983.]

§§ 211.202 to 211.207. Repealed by Acts 1981, 67th Leg., 1st C.S. p. 193, ch. 17, art. 2, § 7, eff. Jan. 1, 1982

See, now, Probate Code, §§ 36B to 36F.

[Sections 211.208 to 211.250 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

§ 211.251. Comptroller's Authority to Examine Books and Other Property

The comptroller may examine books, records, documents, or other property if the examination is necessary for the comptroller to enforce this chapter.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

§§ 211.252 to 211.257. Repealed by Acts 1983, 68th Leg., p. 442, ch. 90, § 5, eff. Sept. 1, 1983

§ 211.258. Penalty for Failure to Pay Tax or for Late Payment

(a) A person who is liable for a tax imposed by this chapter and who fails to pay the tax when due forfeits five percent of the amount due as a penalty, and if the person fails to pay the tax within 30 days after the day on which the tax is due, the person forfeits an additional five percent.

(b) A penalty is not imposed by this section on a person who is liable for the tax if the person shows to the comptroller that the failure to pay the tax is due to a reasonable cause and not due to wilful neglect.

(c) The minimum penalty under this section is \$1.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; renumbered from § 211.260 Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982; amended by Acts 1983, 68th Leg., p. 454, ch. 93, § 10, eff. Sept. 1, 1983.]

Section 16(c) of the 1983 amendatory act provides:

"A provision of this Act that changes a penalty for the failure to pay or report a tax or assessment as required by law applies to taxes or assessments that become delinquent on or after the effective date of this Act. The penalty for the failure to pay or report a tax or assessment that became delinquent before the effective date of this Act is the penalty in effect for that tax or assessment immediately before the effective date of this Act, and the laws providing for those penalties are continued in effect for the sole purpose of assessing, collecting, and enforcing those penalties on taxes or assessments delinquent before the effective date of this Act."

A former § 211.258, relating to penalty as to improper transfer of property, derived from Acts 1981, 67th Leg., p. 1756, ch. 389, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982, was deleted by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.

§ 211.259. Interest on Taxes

(a) A tax imposed by this chapter draws interest at the rate set by Section 111.060 of this code.

(b) The interest begins to accrue nine months after the day of the death of the decedent on whose

estate the tax is determined or, in the case of taxes on generation-skipping transfers, on the original due date of the taxes.

(c) If the accrued interest is less than \$5, it does not have to be paid.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982; renumbered from § 211.261 and amended by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982; amended by Acts 1983, 68th Leg., p. 442, ch. 90, § 6, eff. Sept. 1, 1983.]

A former § 211.259, relating to penalty for failure to file report or return, derived from Acts 1981, 67th Leg., p. 1756, ch. 389, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a) eff. Jan. 1, 1982, was deleted by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982.

§§ 211.260, 211.261. Renumbered as §§ 211.258, 211.259 by Acts 1981, 67th Leg., 1st C.S., p. 189, ch. 17, art. 2, § 1, eff. Jan. 1, 1982

§ 211.262. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 2, § 7, eff. Jan. 1, 1982

[Sections 211.263 to 211.300 reserved for expansion]

#### SUBCHAPTER F. DISPOSITION OF REVENUE

##### § 211.301. General Revenue Fund

The revenue from a tax, interest, or penalty imposed by this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

[Amended by Acts 1981, 67th Leg., p. 2759, ch. 752, § 6(a), eff. Jan. 1, 1982.]

#### SUBTITLE K. POLL TAX [REPEALED]

##### CHAPTER 251. POLL TAX

§§ 251.001 to 251.012. Repealed by Acts 1981, 67th Leg., p. 2757, ch. 752, § 3, eff. Jan. 1, 1982

## TITLE 122. TAXATION

### Chapter

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### CHAPTER ONE. LEVY OF TAXES AND OCCUPATION TAXES

#### Art.

- 7041 to 7045. Repealed.  
 7045a. Expired.  
 7046 to 7047n. Repealed.  
 7047o. Expired.  
 7048. Repealed.  
 7048a, 7048b. Transferred.  
 7049 to 7054. Repealed.  
 7055, 7056. Transferred.  
 7057 to 7057c. Repealed.  
 7057d. Transferred.  
 7057e, 7057f. Repealed.  
 7057g. Validation of Unenforceable Tax Levies and Junior College District Boundary Changes.  
 7057h. Validation of School District Tax Levies.

**Art. 7041. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7041a. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Tax Code.

**Arts. 7042 to 7045. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7045a. Expired May 1, 1945**

This article, derived from Laws 1943, 48th Leg., p. 381, ch. 256, § 3, contained provisions identical with those of article 7045 and additional provisions relating to levy of taxes when any member of Commissioners Court or the county Judge was in military service. It provided that it should be effective until the date set out in section 1 of the act which suspended the provisions of article 7045 until May 1, 1945.

**Art. 7046. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7047. Repealed by Acts 1930, 41st Leg., 5th C.S., pp. 168, 169, ch. 34, §§ 2, 3; Acts 1931, 42nd Leg., p. 111, ch. 73, § 12; Acts 1931, 42nd Leg., 2nd C.S., p. 61, ch. 37, § 1; Acts 1933, 43rd Leg., p. 383, ch. 153, § 23; Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 23; Acts 1941, 47th Leg., p. 269, ch. 184, Art. III, § 1; Acts 1941, 47th Leg., p. 269, ch. 184, Art. XI, § 1; Acts 1943, 48th Leg., p. 86, ch. 67, § 22; Acts 1943, 48th Leg., p. 654, ch. 372, §§ 3, 5-7; Acts 1954, 53rd Leg., 1st C.S., p. 3, ch. 2, Art. II, § 1; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7047a. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7047a-1. Repealed by Acts 1936, 44th Leg., 3rd C.S., p. 2040**

**Arts. 7047a-2 to 7047a-19. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Arts. 7047a-19a, 7047a-19b. Repealed by Acts 1957, 55th Leg., p. 70, ch. 34, § 2**

**Art. 7047a-20. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), (c)(6), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7047b.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7047c.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b); eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7047c-1.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7047c-2.** Repealed by Acts 1959, 56th Leg., p. 814, ch. 371, § 3

**Art. 7047c-3.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), (e)(7), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7047cc.** Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1

**Arts. 7047cc-1, 7047cc-2.** Repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31

**Art. 7047d.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7047e.** Repealed by Acts 1941, 47th Leg., p. 723, ch. 449, § 1

**Art. 7047f.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7047g.** Repealed by Acts 1943, 48th Leg., p. 309, ch. 200, § 1

**Arts. 7047h to 7047k.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7047k-1.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Arts. 7047l to 7047m.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7047n.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7047o.** Expired

**Art. 7048.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Arts. 7048a, 7048b.** Transferred to arts. 2353b, 2353c by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38(b), (c), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, transferring these articles, enacted Title 2 of the Tax Code.

**Arts. 7049 to 7054.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing these articles, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Arts. 7055, 7056.** Transferred to arts. 5221h, 5221i by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38(a), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, transferring these articles, enacted Title 2 of the Tax Code.

**Arts. 7057, 7057a.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7057b.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7057c.** Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. V, § 1, eff. Sept. 1, 1975

**Art. 7057d.** Transferred to Article 7255b

**Art. 7057e.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7057f.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7057g. Validation of Unenforceable Tax Levies and Junior College District Boundary Changes**

**Unenforceable Tax Levies and Boundary Changes**

Sec. 1. (a) All tax levies and junior college district boundary changes heretofore made by and for any tax unit, which levies or boundary changes are

unenforceable because not made in strict compliance with the form and manner required by statute or because of any other defect which may be cured by the legislature; are hereby validated and declared enforceable the same as though they had been regularly made in proper form and manner.

(b) If for any cause any tax unit hereafter fails to make a valid tax levy for any year or years, the tax unit's last valid tax levy prior to such omitted year or years shall be continued in force as the tax levy of such tax unit for each year in which a valid levy was not made, so that there shall never be a year hereafter for which some valid levy is not in force.

**Levies Not Recorded**

Sec. 2. Should any tax unit fail to make a proper record of a tax levy for any year or years, but taxes were assessed and collected by the tax unit for that year or years and the tax rate(s) used can be determined by examining the tax rolls for such year or years, the tax unit's governing body may take testimony and make other inquiry and determine that a proper tax levy was regularly and validly made for each such year but was not recorded, and the governing body may order that a proper tax levy ordinance or other order for each such year be entered in the official records nunc pro tunc, and this record shall be prima facie evidence that the tax unit's levy for such year was properly and regularly made. This provision shall be cumulative of and in addition to all other rights and remedies now available to any tax unit in such cases.

**Tax Unit Defined**

Sec. 3. A tax unit or unit as used in this Act is any governmental agency or subdivision of the state which levies a property tax (ad valorem or otherwise).

**Inapplicability of this Act**

Sec. 4. This Act shall not affect nor apply to any suit pending in any court on the effective date of this Act in which the invalidity or nonrecord of any tax levy, or both of them, has heretofore been pleaded.

**Savings Clause**

Sec. 5. This Act will not affect pending litigation nor any disputed property valuation notice of which has been given to the tax unit involved.

**Partial Invalidity**

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or applica-

tion, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 1441, ch. 586, §§ 1 to 6, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 803, ch. 362, § 4, eff. Aug. 27, 1979.]

**Saved from Repeal**

*This article was saved from repeal by § 39(c)(1) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

**Art. 7057h. Validation of School District Tax Levies**

Sec. 1. The governmental acts and proceedings performed by the governing bodies of all school districts relating to the setting of tax rates or assessment ratios are validated as of the date of the act or proceeding insofar as these acts or proceedings may be invalid because they were not accomplished by ordinance.

Sec. 2. This Act does not apply to any act or proceeding involved in litigation on the date this Act takes effect if the litigation, ultimately results against the legality of the act or proceeding. This Act does not apply to any act or proceeding which has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 803, ch. 362, §§ 1, 2, eff. Aug. 27, 1979.]

**Saved from Repeal**

*This article was saved from repeal by § 39(c)(2) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

**CHAPTER TWO. TAXES BASED UPON GROSS RECEIPTS**

- Art. 7058 to 7063. Repealed.
- 7064. Transferred.
- 7064½. Repealed.
- 7064a. Transferred.
- 7064a-1. Repealed.
- 7064b. Interest on Insurance Premium Tax Not Paid by March 1.
- 7064c. Penalty on Insurance Premium Tax Not Paid by March 1 of Following Year.
- 7064d. Suit by Attorney General to Recover Delinquent Insurance Premium Taxes.
- 7064e. Authority of State Board of Insurance to Verify Insurance Premium Taxes; Rules and Regulations.
- 7065 to 7073. Repealed.
- 7074, 7075. Transferred.
- 7076, 7076a. Repealed.
- 7077. Transferred.
- 7078 to 7083b. Repealed.

**Arts. 7058 to 7060. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7060½. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7060a. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7060b. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Tax Code.

**Arts. 7061 to 7063. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7**

**Art. 7064. Transferred to Insurance Code, art. 4.10, by Acts 1981, 67th Leg., p. 1780, ch. 389, § 36, eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, transferring this article, enacted Title 2 of the Tax Code.

**Art. 7064½. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7064a. Transferred to Insurance Code, art. 4.11, by Acts 1981, 67th Leg., p. 1780, ch. 389, § 36, eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, transferring this article, enacted Title 2 of the Tax Code.

**Art. 7064a-1. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7064b. Interest on Insurance Premium Tax Not Paid by March 1**

Any insurance carrier and any person, corporation, association, or entity or any receiver thereof to which Article 7064, Revised Civil Statutes of Texas, 1925,<sup>1</sup> shall apply, which fails to pay the tax on or before March 1 as provided herein, shall pay interest to the State Board of Insurance to be deposited in the general revenue fund at an annual rate of nine percent for the period from March 1 of the

taxable year until the date such taxes are paid in addition to the taxes due.

[Acts 1981, 67th Leg., p. 3215, ch. 844, § 2, eff. Jan. 1, 1982.]

<sup>1</sup> Transferred to Insurance Code, art. 4.10.

#### Repeal

*Acts 1981, 67th Leg., p. 3215, ch. 844, § 2, added this article, without reference to the repeal of "all laws compiled in Volume 20, Vernon's Texas Civil Statutes" by § 39(b) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

Sections 6 and 7 of Acts 1981, 67th Leg., p. 3216, ch. 844, provide:

"Sec. 6. This Act takes effect January 1, 1982, and applies to taxes on all premiums collected by an insurance carrier after that date.

"Sec. 7. Nothing in this Act shall apply to any suit for refund of taxes paid in prior years, pending on the effective date of this Act."

**Art. 7064c. Penalty on Insurance Premium Tax Not Paid by March 1 of Following Year**

Any insurance carrier which either fails to file a tax return as provided in Article 7064, Revised Civil Statutes of Texas, 1925,<sup>1</sup> or fails to pay any taxes imposed by Article 7064, Revised Civil Statutes of Texas, 1925, on or before the due date of March 1 in the year following the taxable year, shall pay to the State Board of Insurance to be deposited in the general revenue fund a penalty equal to five percent of the amount of taxes due for each month or portion of a month for which such return or payment is late. Any penalty assessed under this article shall not exceed 20 percent of the amount of taxes due. Payment of such penalty is in addition to payment of the taxes due.

[Acts 1981, 67th Leg., p. 3215, ch. 844, § 3, eff. Jan. 1, 1982.]

<sup>1</sup> Transferred to Insurance Code, art. 4.10.

#### Repeal

*Acts 1981, 67th Leg., p. 3215, ch. 844, § 3, added this article, without reference to the repeal of "all laws compiled in Volume 20, Vernon's Texas Civil Statutes" by § 39(b) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

**Art. 7064d. Suit by Attorney General to Recover Delinquent Insurance Premium Taxes**

All delinquent taxes under Article 7064, Revised Civil Statutes of Texas, 1925,<sup>1</sup> including penalties, which are due and owing to the State of Texas shall be recovered by the attorney general in a suit brought by him in the name of the State Board of Insurance on behalf of the State of Texas. The



venue and jurisdiction of all suits arising hereunder are hereby conferred upon the courts of Travis County, Texas. For delinquent taxes, penalties and interest herein provided for, the state shall have a prior and preferred lien on every Texas investment and other thing of value owned by the delinquent taxpayer which shall extend to and be enforceable against any property, either real or personal, or both, owned by the delinquent insurance carrier which property is not exempt from forced sale by reason of existing laws or the constitution of this state or the United States. In addition to the authority to file suit against an insurance organization for delinquent taxes, penalties, and interest, the attorney general, by a suit in the name of the State Board of Insurance, shall have the right to enjoin such delinquent insurance carrier from engaging in the business of insurance in the State of Texas until such delinquent taxes, penalties, and interest are paid in full. Venue for a suit of this nature is also fixed in Travis County, Texas.

[Acts 1981, 67th Leg., p. 3215, ch. 844, § 4, eff. Jan. 1, 1982.]

<sup>1</sup> Transferred to Insurance Code, art. 4.10.

#### Repeal

*Acts 1981, 67th Leg., p. 3215, ch. 844, § 4, added this article, without reference to the repeal of "all laws compiled in Volume 20, Vernon's Texas Civil Statutes" by § 39(b) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

#### Art. 7064e. Authority of State Board of Insurance to Verify Insurance Premium Taxes; Rules and Regulations

The State Board of Insurance shall have authority for the purpose of verifying reports and investigating the affairs of insurance carriers in order to determine whether the tax due under Article 7064, Revised Civil Statutes of Texas, 1925,<sup>1</sup> is being properly reported and paid. Such authority shall include the power to enter upon the premises of any taxpayer liable for such a tax, and any other premises necessary, in determining the correct tax liability and to examine, or cause to be examined, any books or records of any person employed by the insurance carrier subject to such tax, and to secure any other information, directly or indirectly, concerned in the enforcement of Article 7064, Revised Civil Statutes of Texas, 1925. The State Board of Insurance shall further have the authority to promulgate and enforce, according to law, rules and regulations pertinent to Article 7064, Revised Civil Statutes of Texas, 1925, and such rules and regulations shall have the full force and effect of law.

[Acts 1981, 67th Leg., p. 3216, ch. 844, § 5, eff. Jan. 1, 1982.]

<sup>1</sup> Transferred to Insurance Code, art. 4.10.

#### Repeal

*Acts 1981, 67th Leg., p. 3216, ch. 844, § 5, added this article, without reference to the repeal of "all laws compiled in Volume 20, Vernon's Texas Civil Statutes" by § 39(b) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

Art. 7065. Repealed by Acts 1931, 42nd Leg., p. 163, ch. 98, § 1; Acts 1933, 43rd Leg., p. 75, ch. 44, § 17; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Arts. 7065a to 7065q. Repealed by Acts 1933, 43rd Leg., p. 75, ch. 44, § 17

Arts. 7065a-1 to 7065a-18. Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, art. XVII, § 28

Arts. 7065b-1 to 7065b-29. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7066. Repealed by Acts 1930, 41st Leg., 5th C.S., p. 233, ch. 74, § 4; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7066a. Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, art. III, § 1

Arts. 7066b, 7066b-1. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7066c. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

Art. 7067. Repealed by Acts 1927, 40th Leg., p. 431, ch. 286, § 1

Art. 7067a. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), (e)(2), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

Art. 7068. Repealed by Acts 1931, 42nd Leg., p. 447, ch. 267, § 5; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Arts. 7069, 7070. Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

Art. 7070a. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7071.** Repealed by Acts 1933, 43rd Leg., p. 409, ch. 162, § 10; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7072.** Repealed by Acts 1953, 53rd Leg., p. 1010, ch. 414, § 1

**Art. 7073.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Arts. 7074, 7075.** Transferred to Insurance Code, arts. 4.13, 4.14, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, transferring these articles, enacted Title 2 of the Tax Code.

**Art. 7076.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7076a.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), (e)(4), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7077.** Transferred to Insurance Code, art. 4.15, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, transferring this article, enacted Title 2 of the Tax Code.

**Art. 7078.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Arts. 7079 to 7083.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing these articles, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Arts. 7083a to 7083a.2.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2256, ch. 540, § 15(1) to (3), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 389, repealing these articles, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7083b.** Repealed by Acts 1969, 61st Leg., p. 2341, ch. 792, § 5, eff. Jan. 1, 1970

### CHAPTER THREE. FRANCHISE TAX

**Art.**  
7084 to 7097. Repealed.

**Arts. 7084, 7084a.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7084b.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Arts. 7084½ to 7087.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Art. 7088.** Repealed by Acts 1930, 41st Leg., 5th C.S., p. 220, ch. 68, § 1

**Art. 7089.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

**Arts. 7089a to 7089h.** Repealed by Acts 1949, 51st Leg., p. 975, ch. 536, § 14

**Arts. 7090 to 7097.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

### CHAPTER FOUR. INTANGIBLE TAX BOARD

**Art.**  
7098 to 7116. Repealed.

**Arts. 7098, 7098a.** Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7098b.** Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7099.** Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7100.** Repealed by Acts 1975, 64th Leg., p. 898, ch. 334, § 11, eff. Sept. 1, 1975

**Arts. 7101 to 7104.** Repealed by Acts 1971, 62nd Leg., p. 1066, ch. 221, § 6, eff. Aug. 30, 1971

**Arts. 7105 to 7116.** Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(c), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing these articles, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

#### CHAPTER FIVE. INHERITANCE TAX

**Arts. 7117 to 7144.** Repealed by Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b (§ 18); Acts 1945, 49th Leg., p. 546, ch. 332, § 4; Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

#### CHAPTER FIVE A. ADDITIONAL INHERITANCE TAXES

**Art. 7144a.** Repealed by Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1, § 7

#### CHAPTER SIX. PROPERTY SUBJECT TO TAXATION AND RENDITION

**Art.**

7145 to 7155. Repealed.

7155a. Transferred.

7156 to 7176. Repealed.

**Art. 7145.** Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(d), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Arts. 7146 to 7149.** Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7150.** Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(d), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7150.1.** Repealed by Acts 1981, 67th Leg., 1st C.S., p. 1786, ch. 13, § 167(b), eff. Aug. 14, 1981

See, now, Tax Code, § 11.27.

**Arts. 7150.2 to 7150.6.** Repealed by Acts 1979, 66th Leg., p. 2331, ch. 841, § 6(f)(1), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing these articles, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7150a.** Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

**Arts. 7150b to 7150i.** Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(d), eff. Jan. 1, 1980

Acts 1979, 66th Leg., ch. 841, repealing these articles, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7150j.** Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7150k.** Repealed by Acts 1979, 66th Leg., p. 697, ch. 302, art. 12, § 1, eff. May 31, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

**Arts. 7150l to 7150n.** Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7150o.** Repealed by Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 167(b), eff. Aug. 14, 1981

See, now, Tax Code, § 23.02.

**Arts. 7151 to 7155.** Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7155a.** Transferred to art. 2353d by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38(d), eff. Jan. 1, 1982

Acts 1981, 67th Leg., ch. 389, transferring this article, enacted Title 2 of the Tax Code.

**Arts. 7156 to 7168. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7169. Repealed by Acts 1979, 66th Leg., p. 2330, ch. 841, § 6(c), eff. Jan. 1, 1980**

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

**Arts. 7169a to 7174. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Arts. 7174A, 7174B. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(f)(2), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Arts. 7175, 7176. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

#### CHAPTER SEVEN. ASSESSMENT AND ASSESSORS

**Art.**

7177 to 7226. Repealed.

7227. Transferred.

7228 to 7244a. Repealed.

7244b. Property Taxation Professional Certification Act.

7244c. Repealed.

**Arts. 7177 to 7180. Repealed by Acts 1933, 43rd Leg., p. 598, ch. 197, § 6**

**Art. 7181. Repealed by Acts 1935, 44th Leg., p. 648, ch. 262, § 2**

**Art. 7181a. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7182. Repealed by Acts 1935, 44th Leg., p. 648, ch. 262, § 2**

**Arts. 7183 to 7226. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7227. Transferred to art. 6626d by Acts 1981, 67th Leg., 1st C.S., p. 176, ch. 13, § 160, eff. Jan. 1, 1982**

Section 160 of the 1981 Act provided:

"The repeal of Article 7227, Revised Civil Statutes of Texas, 1925, by Section 6(a)(1), Chapter 841, Acts of the 66th Legislature, 1979, is repealed. That article is transferred, effective January 1, 1982, to Title 115, Revised Civil Statutes of Texas, 1925, and redesignated as Article 6626d."

Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), was effective January 1, 1982.

**Arts. 7228 to 7241. Repealed by Acts 1951, 52nd Leg., p. 361, ch. 226, § 1**

**Arts. 7242 to 7244a. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7244b. Property Taxation Professional Certification Act**

#### Purpose of Act

Sec. 1. The Constitution of Texas requires that taxation be equal and uniform. It provides for taxation in proportion to value. The responsibility for assessing property in compliance with constitutional requirements is that of the tax assessor-collector. The purpose of the legislature by this Act is to assure the people of Texas that the responsibility of assessing property for taxation is entrusted only to those persons duly registered and competent according to the regulations provided by this Act. The legislature further intends that the assessing of property for taxation be practiced and regulated as a learned profession and that the practitioners in this state be accountable to the public.

#### Definitions

Sec. 2. In this Act:

(1) "Appraisal" means those functions described in Chapters 23 and 25, Tax Code, that are performed by employees of political subdivisions or by persons acting on behalf of political subdivisions and that involve an estimate or opinion of value of a property interest.

(2) "Assessment" means those functions described in Chapter 26, Tax Code, and performed by employees of political subdivisions or by persons acting on behalf of political subdivisions, to determine an amount of ad valorem tax.

(3) "Board" means the Board of Tax Professional Examiners.

(4) "Chief appraiser" means the chief administrator of the district appraisal office as defined by Section 6.05, Tax Code.

(5) "Code of ethics" means a formal statement of ethical standards of conduct adopted by the board.

(6) "Collections" means those functions described in Chapter 31 and Sections 33.02, 33.03, and 33.04, Tax Code.

(7) "Governing body" means a county commissioners court, city council, board of trustees, or governmental board of any political subdivision of this state defined as a taxing unit by Section 1.04, Tax Code.

(8) "Registered professional appraiser" means the highest level of certification established by the board for a person engaged in appraisal.

(9) "Registered Texas assessor" means the highest level of certification established by the board for a person engaged in assessment.

(10) "Registered Texas collector" means the highest level of certification established by the board for a person engaged in collections.

(11) "Tax assessor-collector" means the chief administrator of a taxing unit's tax office who is responsible for the assessing functions described in Chapter 26, Tax Code, and for collection functions described in Chapter 31, Tax Code.

(12) "Tax collector" means the chief administrator of a taxing unit's tax office who is responsible for collection functions described in Chapter 31, Tax Code, but not for assessing functions.

#### Short Title

Sec. 3. This Act shall be known as "The Property Taxation Professional Certification Act."

#### Board of Tax Professional Examiners; Qualifications; Term of Office

Sec. 4. (a) The Board of Tax Professional Examiners is established.

(b) The board consists of six members appointed by the governor with the advice and consent of the senate. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(c) To be eligible to serve on the board an individual must be a resident of this state, be actively engaged in property tax administration, have at least five years experience in appraisal for property tax purposes, and be certified as a registered professional appraiser or registered Texas assessor under this Act. However, for the members first

appointed, certification by a recognized professional association of assessors or appraisers satisfies the certification requirement for eligibility.

(d) Members hold office for terms of six years, with the terms of two members expiring on March 1 of each odd-numbered year.

#### Expenses

Sec. 5. Board members receive no compensation for their services, but each is entitled to be reimbursed for the necessary expenses incurred in the discharge of his duties.

#### Regular and Special Meetings; Election of Officers; Quorum

Sec. 6. (a) The board shall hold at least one regular meeting in each calendar quarter. Special meetings shall be held at such times as are required, according to the bylaws and rules of procedure enacted by the board.

(b) Members of the board shall receive notice of special meetings at least 15 days in advance of the meeting date.

(c) The board shall elect annually from its membership a chairman, vice-chairman, and secretary-treasurer. The election of officers shall be held at the first regular meeting of each calendar year. A majority of the members constitutes a quorum.

#### Rules and Regulations

Sec. 7. The board may make and enforce all rules and regulations necessary for the performance of its duties, establish standards of professional practice, conduct, education, and ethics for appraisers, assessors, and collectors in keeping with the purposes and intent of the Act, and insure strict compliance with and enforce all provisions of this Act.

#### Receipt and Accounting of Money; Assessors Registration Fund; Record of Proceedings; Roster of Registrants

Sec. 8. (a) The board shall receive and account for all money derived under the provisions of this Act and shall pay it to the State Treasurer. The State Treasurer shall designate a separate fund to be known as the "Assessors Registration Fund," which may be used only by the board for the purpose of administering this Act.

(b) The board shall keep an accurate record of all proceedings, which shall be available to the public at all times. The board shall also maintain a roster of all persons registered with the board, showing their names, places of employment, and classification. The roster shall be placed on file with the Secretary of State. Copies of the roster shall be made available to persons registered under this Act and to the public on request.

**Executive director; personnel**

Sec. 9. (a) The board shall employ an executive director who shall administer the operations of the board as directed by the board.

(b) The director may employ other personnel to assist him in the performance of his duties.

**Initiation of Proceedings; Notice; Dismissal of Complaints Without Hearing**

Sec. 10. (a) The board may initiate proceedings under this Act, either on its own motion or on the complaint of any person, to insure strict compliance with this Act and all rules adopted by the board. The violation of a provision of this Act or a rule of the board is a sufficient ground to refuse, suspend, or revoke a registration granted under the terms of this Act. The board shall adopt rules for the conduct of proceedings under this section. The rules shall require that written notice be sent by certified mail at least 20 days before a hearing to every party stating the nature of the complaint and the time and place of the hearing before the board.

(b) The board may dismiss without a hearing a complaint involving a disagreement on the matter of the appraised value of a property and that has not been resolved in the complainant's favor by an appraisal review board or court.

**Persons Required to Register**

Sec. 11. The following persons shall register with the board:

(1) all chief appraisers, appraisal supervisors and assistants, property tax appraisers, appraisal engineers, and other persons with authority to render judgment on, recommend, or certify appraised values to the appraisal review board of an appraisal district;

(2) the tax assessor-collector, tax collector, or other person designated by the governing body of a taxing unit as the chief administrator of the unit's assessment functions, collections functions, or both; and other persons who perform assessment or collections functions for the unit whom the chief administrator of the unit's tax office requires to register; and

(3) all persons engaged in appraisals of real or personal property for ad valorem tax purposes for an appraisal district or a taxing unit.

**Identification Card**

Sec. 12. While on official duty, persons registered and authorized to engage in appraisal, assessment, or collections shall carry a serially numbered identification card issued by the board stating the expiration date of the registration and describing any classification into which the holder is placed for purposes of registration.

**Annual and Renewal Fees; Reinstatement**

Sec. 13. Registrants shall pay to the board an annual fee not to exceed \$35. The annual registration period expires on December 31 of each year, and registration must be renewed annually. The board shall determine the amount of the renewal fee for each coming year on or before December 1 of each year and mail renewal notices to all persons registered under this Act on or before that date. A person registered under this Act who fails to pay the annual renewal fee on or before January 31 of each year shall be deleted from the list of persons duly registered. Persons applying for reinstatement within 30 days shall pay a penalty, not to exceed \$25, set by the board. Reinstatement thereafter may be obtained only by a new application to and examination by the board. The board may not waive the collection of a fee or penalty described under this Act.

**Applications for Registration; Processing Fee**

Sec. 14. All applications for registration shall be made on printed forms provided by the board, and applications made otherwise may not be accepted. The board in prescribing the contents of application forms shall ensure that each form requires sufficient information to determine an applicant's proper classification. The form shall be accompanied by the code of ethics. The completed application, including the code of ethics, shall be signed and sworn to before a notary public or other person qualified to administer oaths. Initial application for registration shall be accompanied by a processing fee of \$50 which shall be retained by the board without regard to the disposition of the application and the registration fee required by Section 13 of this Act which shall be refunded if the board disapproves the application. The board shall act on all applications within 30 days after they are received by the board. Applicants approved by the board shall be registered and notified of the requirements for professional certification by the board.

**Qualifications of Applicants**

Sec. 15. An applicant must be at least 18 years of age, a resident of the State of Texas, a person of good moral character and actively engaged in appraisal, assessment, or collection for a taxing unit. The applicant must be a graduate of an accredited high school or establish high school graduation equivalency. When an application is approved, the board shall classify and register the applicant, and inform the applicant of requirements that he must meet to maintain current registration.

**Classification System**

Sec. 16. The board by rule shall adopt a classification system for registrants and establish minimum requirements for each classification. Requirements must be based on experience in property taxation administration, education and training, pro-

fessional performance and achievements, and compliance with the code of ethics.

#### Requirements for Certification

Sec. 17. (a) The board by rule shall adopt minimum requirements for the certification of registrants. For an employee of a taxing unit's tax office, the requirements for certification shall emphasize, but shall not necessarily be limited to, the areas of responsibility of the registrant in performing his duties for the taxing unit.

(b) The rules shall require that:

(1) a person registered as an appraiser attain certification as a registered professional appraiser within five years after his initial registration;

(2) a person registered as an assessor or assessor-collector attain certification as a registered Texas assessor within five years after his initial registration; and

(3) a person registered as a collector attain certification as a registered Texas collector within three years after his initial registration.

#### Recertification; Specialized Classifications, Designations and Requirements

Sec. 18. The board may adopt rules:

(1) regarding recertification to assure that all persons certified continue to be duly registered and professionally competent so long as they are active in appraisal, assessment, or collections; and

(2) establishing specialized classifications, designations, and requirements that are necessary to accomplish the purposes of this Act and maintain high standards of professional practice in all phases of property taxation.

Secs. 19, 20. Repealed by Acts 1983, 68th Leg., p. 5342, ch. 980, § 2, eff. Sept. 1, 1983.

#### Discrimination Prohibited

Sec. 21. No person may be denied the right to register under the terms of this Act because of race, color, creed, sex, or ethnic origin.

#### Unprofessional Manner or Violation of Act Required by Appraisal District Board of Directors or Governing Body Prohibited

Sec. 22. No appraisal district board of directors or governing body of a taxing unit of this state may, as a necessity for employment, require that an appraiser, assessor, or collector act in an unprofessional manner or commit acts in violation of this Act. A complaint of a violation of this section shall be thoroughly investigated by the board.

Sec. 23. Repealed by Acts 1983, 68th Leg., p. 5342, ch. 980, § 2, eff. Sept. 1, 1983.

#### Offenses and Penalties; Complaint Concerning Unauthorized Practices

Sec. 24. (a) A person who is required under Section 11 of this Act to register with the board commits a Class C misdemeanor if he fails to register.

(b) A person commits an offense if he performs an appraisal, assessment, or collections function during a period in which his registration or certification with the board is revoked or suspended. An offense under this subsection is a Class B misdemeanor.

(c) A person may file a complaint concerning the unauthorized practice of appraisal, assessment, or collections under this section with the county attorney of the county where the practice occurred or with the board.

Sec. 24A. Repealed by Acts 1983, 68th Leg., p. 5342, ch. 980, § 2, eff. Sept. 1, 1983.

[Acts 1977, 65th Leg., p. 1068, ch. 391, §§ 1 to 24A, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 206, ch. 116, § 1, eff. May 9, 1979; Acts 1981, 67th Leg., p. 3224, ch. 848, §§ 1 to 5, eff. Oct. 1, 1981. Acts 1983, 68th Leg., p. 363, ch. 81, § 7(a), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5329, ch. 980, § 1, eff. Sept. 1, 1983].

#### Saved from Repeal

*This article was saved from repeal by § 39(c)(5) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

Section 7(b) of Acts 1983, 68th Leg., p. 365, ch. 81, provides: "The increase in the processing fee for an initial application made by Subsection (a) of this section does not apply to an application filed before the effective date of this section. The processing fee for such an application is the fee in effect on the date the application was filed."

Sections 3 and 4(b) of Acts 1983, 68th Leg., p. 5342, ch. 980, provide:

"Sec. 3. (a) The name of the Board of Tax Assessor Examiners is changed to the Board of Tax Professional Examiners, and its members serve as members of the Board of Tax Professional Examiners for the terms to which each was appointed to serve on the Board of Tax Assessor Examiners. All books, records, property, and personnel of the Board of Tax Assessor Examiners are transferred to the Board of Tax Professional Examiners.

"(b) All forms, rules, procedures, and actions adopted by the Board of Tax Assessor Examiners are valid and continued in effect until modified or revoked by the Board of Tax Professional Examiners.

"(c) The change in law made by this Act to Section 24, The Tax Assessors Registration and Certification Act (Article 7244b, Vernon's Texas Civil Statutes), applies only to an offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(d) The increase in the processing fee made by the amendment by this Act of Section 14, The Texas Assessors Registration and Professional Certification Act (Article 7244b, Vernon's Texas Civil Statutes), does not apply to an application filed before the effective date of this Act. The processing fee for an application filed before the effective date of this Act is the fee in effect when the application was filed.

"Sec. 4. (b) The Board of Tax Assessor Examiners may adopt rules and forms before September 1, 1983, to be effective on and after September 1, 1983, under the law as amended by this Act,

and may make other reasonable preparations before the effective date of this Act in anticipation of the effective date."

**Art. 7244c. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**CHAPTER EIGHT. COLLECTION AND COLLECTOR**

**Art.**

7245 to 7261.1. Repealed.

7261a. Acceptance of Checks by Tax Collector for Payment of Fees and Taxes.

7262 to 7294. Repealed.

7294a, 7294b. Unconstitutional.

7295 to 7298a. Repealed.

**Arts. 7245 to 7255. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7255a. Repealed by Acts 1939, 46th Leg., p. 654, § 2**

**Arts. 7255b to 7258. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7258a. Repealed by Acts 1969, 61st Leg., p. 1044, ch. 339, § 7, eff. May 27, 1969**

**Arts. 7258b, 7259. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7260. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7261. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7261.1. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 182, ch. 13, § 167(b), eff. Aug. 14, 1981**

See, now, Tax Code, § 31.11.

**Art. 7261a. Acceptance of Checks by Tax Collector for Payment of Fees and Taxes**

**Definitions**

Sec. 1. In this Act:

(1) "Tax collector" means the county tax assessor-collector.

(2) "Check" means an instrument signed by the maker; containing an unconditional promise or order to pay a sum certain in money and containing no other promise, order, obligation, or power given by the maker; payable on demand; and drawn on a bank.

(3) "Maker" means the drawer of a check.

**Acceptance of Check for Payment of Certain Fees Permitted**

Sec. 2. A tax collector may, but is not required to, accept a check for the payment of motor vehicle registration fees (Article 6675a-1 et seq., Vernon's Texas Civil Statutes); motor vehicle sales taxes imposed by Chapter 6, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925;<sup>1</sup> occupation taxes paid to the tax collector under Chapter 19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925;<sup>2</sup> motor vehicle title transfer fees under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes); license or permit fees under the Texas Liquor Control Act (Article 666-1 et seq., Vernon's Texas Penal Auxiliary Laws),<sup>3</sup> and property taxes.

<sup>1</sup> Repealed; see, now, Tax Code, § 152.001 et seq.

<sup>2</sup> Repealed; see, now, Tax Code, § 191.001 et seq.

<sup>3</sup> See, now, Alcoholic Beverage Code.

**Issuance Conditional on Bank's Honoring Check**

Sec. 3. The acceptance of a check for the payment of taxes and fees listed in Section 2 of this Act does not constitute payment of the tax or fee, and the tax or fee is not considered paid until the check is honored by the bank on which the check is drawn. This section does not prohibit a tax collector from issuing receipts, license plates, certificates, or other instruments on the receipt of a check, but the issuance is conditional on the payment of the check by the drawee bank.

**Identification Required**

Sec. 4. When a tax collector receives a check as conditional payment of a tax or fee listed in Section 2 of this Act, he shall require adequate identification of the maker and note on the check or otherwise record the type of identification of the maker and information from the identification to assist in



locating the maker in the event the check is not honored.

#### Liability of Tax Collector and Bondsman

Sec. 5. Except as provided in Section 8 of this Act, a tax collector and his bondsman are not liable for the amount of any taxes and fees for which the tax collector has accepted a check that is not honored by the drawee bank if the tax collector complied with the requirements of Section 4 of this Act and if the tax collector did not know or should not reasonably have known that the check was not properly drawn or that it would not be honored.

#### Procedures for Collection of Dishonored Checks

Sec. 6. A tax collector may establish procedures for the collection of dishonored checks. The procedures may include:

(1) official notification to the maker that the check has not been honored and that the receipt, registration, certificate, or other instrument issued on the receipt of the check is not valid until payment of the tax or fee is made;

(2) notification of the sheriff or other law enforcement officers that a check has not been honored and that the receipt, registration, certificate, or other instrument held by the maker is not valid; and

(3) notification to the State Department of Highways and Public Transportation, the State Comptroller of Public Accounts, or the Department of Public Safety that the receipt, registration, certificate, or instrument held by the maker is not valid.

#### Dishonored Checks; Remission Not Required; Notice; Assistance in Collection

Sec. 7. If taxes and fees listed in Section 2 of this Act are required to be remitted to the State Comptroller of Public Accounts or the State Department of Highways and Public Transportation and if payment was made to the tax collector by a check that was not honored by the drawee bank, the amount of the tax or fee is not required to be remitted, but the tax collector shall notify the appropriate department of the amount of the fee or tax, the type of fee or tax involved, and the name and address of the maker. The State Department of Highways and Public Transportation and the State Comptroller of Public Accounts shall assist the tax collector in collecting the fee or tax and may cancel or revoke any receipt, registration, certificate, or instrument issued in the name of the state conditioned on the payment of the fee or tax.

#### Liability of Tax Collector for Violations of Act

Sec. 8. If the State Comptroller of Public Accounts or the State Department of Highways and Public Transportation determines that the tax collector of a county has accepted payment for fees and taxes to be remitted to that department in violation of Section 4 of this Act or that more than

two percent of the fees and taxes to be received from the tax collector are not remitted because of the acceptance of checks that are not honored by the drawee bank, the department may notify the tax collector that he may not accept a check for the payment of any fee or tax to be remitted to that department. A tax collector who, after notice that he may not receive a check for the payment of fees or taxes to be remitted to a department, accepts a check for the payment of a fee or tax, is liable to the state for the amount of the check accepted.

#### Rules for Acceptance of Checks and Collection of Dishonored Checks

Sec. 9. The State Comptroller of Public Accounts and the State Department of Highways and Public Transportation may make rules concerning the acceptance of checks by tax collectors and for the collection of dishonored checks.

[Acts 1977, 65th Leg., p. 2121, ch. 847, §§ 1 to 9, eff. Aug. 29, 1977.]

#### Saved from Repeal

*This article was saved from repeal by § 39(c)(7) of Acts 1981, 67th Leg., p. 1785, ch. 389, which enacted Title 2 of the Tax Code.*

**Arts. 7262 to 7264a. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7264b. Repealed by Acts 1951, 52nd Leg., p. 313, ch. 189, § 1**

**Arts. 7265 to 7294. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Arts. 7294a, 7294b. Unconstitutional**

Article 7294a, derived from Acts 1939, 46th Leg., p. 668, attempting to donate for period of five years to various counties of the state one-half of state ad valorem taxes collected for general revenue purposes upon property and from persons in such county, is invalid under Const. Art. 8, § 6, prohibiting Legislature from making an appropriation for a longer term than two years. See *Dallas County v. McCombs* (1940) 135 T. 272, 140 S.W.2d 1109.

Article 7294b, derived from Acts 1939, 46th Leg., Spec. L., p. 987, donating to enumerated counties the state ad valorem taxes necessary to reimburse such counties for tax losses sustained because of purchase of lands therein by federal government, is invalid under Const. Art. 8, § 6, as attempting to make appropriations of state moneys for a longer period than two years, and as making appropriations which are not specific. See *State v. Angelina County* (1941) 136 T. 247, 150 S.W.2d 379.

**Arts. 7295 to 7298. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 7298a. Repealed by Acts 1979, 66th Leg., p. 158, ch. 86, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Acts 1979, 66th Leg., ch. 841, repealing this article, enacts the Property Tax Code, constituting Title 1 of the Tax Code.

#### CHAPTER NINE. BACK TAXES ON UNRENDERED LANDS

**Arts. 7299 to 7318. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

#### CHAPTER TEN. DELINQUENT TAXES

**Art. 7319 to 7345f. Repealed.**

**Arts. 7319 to 7331. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

**Art. 7331a. Repealed by Acts 1930, 41st Leg., 4th C.S., p. 3, ch. 3, §§ 1, 2**

**Arts. 7332 to 7336a. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

**Art. 7336b. Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 211, ch. 79, § 6**

**Arts. 7336c to 7345f. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

#### CHAPTER ELEVEN. IN CERTAIN CASES

**Arts. 7346 to 7359. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982**

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Tax Code.

#### CHAPTER TWELVE. MULTISTATE TAX COMPACT [REPEALED]

**Art. 7359a. Repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(b), eff. Jan. 1, 1982**

Acts 1981, 67th Leg., ch. 389, repealing this article, enacted Title 2 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

### TITLE 122A. TAXATION—GENERAL

*Title 122A, Taxation—General, was generally repealed by Acts 1981, 67th Leg., p. 1785, ch. 389, § 39(a), effective January 1, 1982. For disposition of the*

*subject matter of the former provisions of Title 122A, see the Disposition Table preceding the Tax Code.*

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