



Legislative Update

August 2011

Susan Combs | Texas Comptroller of Public Accounts

Focus on 2011 Legislation

General Bills

City and County Origin of Tax Collections Report

House Bill 654 (Effective Sept. 1, 2011)

House Bill 654 requires the Comptroller to produce a report, before each regular session of the Legislature, regarding the amount of revenue remitted to the Comptroller in each county and municipality for each tax collected by the Comptroller, if the information is available through tax returns. The report will be available to the public on the Comptroller's website.

Enforcement of Tax Laws

Senate Bill 934 (Effective Sept. 1, 2011)

Senate Bill 934 contains numerous provisions relating to the administration and enforcement of tax laws.

It amends the Tax Code by adding Section 111.00452, which expands the subject matter jurisdiction of the Comptroller's investigators to include investigation of any criminal offense under any other law if the offense relates directly or indirectly to a tax, fee, penalty or charge administered, collected or enforced by the Comptroller.

It amends Tax Code Section 111.006(c) to allow the Comptroller or Attorney General to use confidential tax information to enforce the criminal laws of Texas or the United States.

It adds Tax Code Section 101.0021 which makes Criminal Conspiracy under Penal Code Section 15.02 applicable to Tax Code offenses. It amends Penal Code Section 71.02 to add Tax Code felonies to the list of crimes that may be prosecuted as Engaging in Organized Crime. It amends the definition of "Proceeds" under Penal Code Section 34.01 (Money Laundering) to include proceeds acquired or derived from conduct that constitutes an offense under Tax Code Section 151.7032 (Failure to Pay Sales Tax Collected; Criminal Penalty).

It adds Article 42.0182 to the Code of Criminal Procedure, which, in a criminal case, allows the state to request that the judge make affirmative findings of tax fraud if the elements of the fraud penalties defined in Tax Code Chapters 111 or 162 are proved by clear and convincing evidence in the course of the proceeding.

It amends Tax Code Sections 111.061 and 162.401 to specify that the penalties in subsection (b) of those sections are remedial in nature, provide for the protection of state revenue and to reimburse the state for expenses, including investigative expenses, incurred as a result of fraud.

It adds the period during which an indictment for a tax-related felony is pending as one of the periods which may toll the statute of limitations under Tax Code Section 111.207(a).

The bill amends Tax Code Section 151.025 to clarify the record-keeping requirements for all sellers and other persons purchasing a taxable item in Texas and storing, using or consuming it in Texas.

IN THIS UPDATE

This publication features the changes to Texas tax laws resulting from house and senate bills passed during the 82nd Legislature Regular Session along with summaries of the legislation passed during the 82nd Legislature, 1st Called Session.

The summaries are organized alphabetically by tax and then numerically by bill number.

- General Bills
- 9-1-1 Equalization Surcharge
- Cigarette Tax; Cigars and Tobacco Products Tax
- Franchise Tax
- Hotel Occupancy Tax
- Insurance Tax
- Mixed Beverage Gross Receipts Tax
- Motor Fuels Taxes
- Motor Vehicle Sales and Use Tax
- Petroleum Products Delivery Fee
- Sales and Use Tax – General
- Sales and Use Tax – Local Tax
- Sales and Use Tax – Local Jurisdictions Authorized

Tax Code Section 151.7032, Failure to Pay Taxes Collected; Criminal Penalty, is amended by changing the criminal penalty value ladder. The new ladder creates Class A and B misdemeanors and redefines the threshold for a Class C misdemeanor; it also changes the thresholds for state jail, 3rd and 2nd degree felonies, and creates a 1st degree felony when the value of the tax collected and not paid is \$200,000 or more. It clarifies that amounts of tax collected and not paid may be aggregated when pursuant to one continuous scheme or course of conduct when determining the grade of the offense.

Tax Code Section 151.707 is amended to apply criminal penalties to tampering with a resale or exemption certificate.

Section 151.7075 creates a new criminal offense for failing to produce records documenting a taxable sale of beer, wine, malt liquor, cigarettes, cigars and tobacco products purchased using a resale certificate. The criminal penalty value ladder is based on the amount of tax avoided when the retailer purchased those goods using a resale certificate.

Tax Code Chapters 154 and 155 are amended to allow the Comptroller's Criminal Investigations Division to use forfeited property for official use prior to sale and to allow the Comptroller to submit as evidence photographs of seized cigarettes/tobacco products, instead of the actual cigarettes or tobacco products, in criminal proceedings.

Tax Records – Maintenance Requirements Expanded

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 4 (Effective Oct. 1, 2011)

This bill amends Tax Code Sections 111.0041, 112.052, 112.151, 151.025, 152.063, 152.0635, 154.209, 155.110, 160.046, 162.0125 and Occupations Code Section 2153.201 to require taxpayers to keep their records open for inspection for at least four years, and with respect to records related to a taxpayer's claim, longer than four years during any period when tax, penalty or interest may be assessed, collected or refunded by the Comptroller or while an administrative hearing or judicial proceeding is pending.

Section 111.0041 also requires taxpayers to produce contemporaneous records and supporting documentation for transactions in question, to enable verification of claims related to the amounts of tax, penalty or interest to be assessed, collected or refunded in an administrative hearing or judicial proceeding. The amendment gives examples of what may constitute contemporaneous records and supporting documentation.

Late Filing Penalties

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 14 (Effective Oct. 1, 2011)

Beginning with reports originally due on or after Oct. 1, 2011, certain taxpayers will be assessed a \$50 penalty when a report is filed late. The penalty will be assessed regardless of whether the taxpayer subsequently files the report or whether any taxes or fees were due from the taxpayer for the period covered by the late-filed report. The \$50 penalty is due in addition to any other penalties assessed for the reporting period.

Taxes or fees affected by this provision are:

- 9-1-1 prepaid wireless emergency service fee;
- fireworks tax;
- franchise tax;
- hotel occupancy tax;



- maquiladora tax;
- mixed beverage gross receipts tax;
- motor fuels tax;
- motor vehicle gross rental receipts tax;
- motor vehicle seller financed sales tax;
- sales and use tax (including direct pay); and
- the off-road, heavy-duty diesel equipment surcharge tax.

Prior to this provision, \$50 penalties were only imposed on the third, and all subsequent, late filings of sales and use tax; maquiladoras; fireworks and off-road, heavy-duty diesel equipment surcharge reports. Article 14 repeals Tax Code Section 151.7031, the statute that prohibited application of the \$50 late filing penalty to the first two occurrences of late filing of reports for those taxes.

9-1-1 Equalization Surcharge

9-1-1 Equalization Surcharge Rate

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 73 (Effective Sept. 28, 2011)

The Health and Safety Code is amended to clarify that the equalization surcharge applies to local exchange service providers, wireless service providers and any other provider of local exchange access lines or equivalent local exchange access lines.

Exemptions from the equalization surcharge are provided for a line connected to:

- coin-operated public telephone equipment or public telephone equipment operated by a coin or card reader;
- any line that the Commission on State Emergency Services excluded from the definition of a local exchange access line or an equivalent local exchange access; or
- any wireless telecommunications connection that constitutes prepaid wireless telecommunications service subject to the Prepaid 9-1-1 Wireless Telecommunication Fee of 2 percent.

The rate of the equalization surcharge is set by the Commission on State Emergency Services and must be a fixed amount not to exceed 10 cents per month for each local exchange access line, equivalent local exchange access line or wireless telecommunications connection.

Other than the Prepaid 9-1-1 Wireless Fee of 2 percent, a fee or surcharge imposed under Section 771.0725, Health and Safety Code, must be either stated separately on the customer's bill or combined in an appropriately labeled single line item on the customer's bill with all other fees and surcharges that are imposed under this subchapter or that are imposed for 9-1-1 emergency service by a political subdivision. A service provider that combines the fees and surcharges into a single line item for billing purposes must maintain books and records reflecting the collection of each separate fee and surcharge.

Cigarette Tax; Cigars and Tobacco Products Tax

Forfeiture Proceedings

Senate Bill 934 (Effective Sept. 1, 2011)

This bill, in part, amends Tax Code Chapters 154 and 155, and establishes that a forfeiture proceeding (as it relates to the enforcement of the cigarette tax and the cigars and tobacco products tax) is an *in rem* proceeding.

It also provides that the Comptroller's Criminal Investigations Division (while enforcing the tobacco taxes laws) may retain, use for official business and subsequently sell at public or private sale in any commercially reasonable manner, property forfeited to the



state, including automobiles. The bill establishes that the Comptroller is considered the owner (under Transportation Code provisions relating to vehicle title and registration) of a vehicle seized and forfeited in enforcing the tobacco taxes laws.

The bill also provides that the Comptroller may photograph seized cigarettes and tobacco products before they are sold and offer the photographs as evidence in any proceeding arising out of Chapters 154 and 155, including a criminal proceeding, in lieu of the product itself.

Recordkeeping; Stamping Allowance Decrease

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 11 (Effective Oct. 1, 2011)

This bill, in part, amends the Tax Code, Chapters 154 and 155, to require the maintenance of tax records for more than four years while hearing and court proceedings are pending on tax assessments or refunds; and to clarify the types of records that must be maintained.

It also amends the Tax Code, Chapter 154, Section 154.052 (a) and lowers the cigarette distributor stamping allowance to 2.5 percent (from 3 percent) of the face value of stamps purchased. The lowered stamping allowance applies only to stamps purchased on and after Oct. 1, 2011.

Franchise Tax

Study of Incentives for Research and Development Activities

House Bill 2383 (Effective June 17, 2011)

This bill requires the Legislative Budget Board (LBB) to conduct a study of the costs and benefits to the state of reenacting the tax credit for research and development activities repealed by the 79th Legislature in 2006. The bill also requires the LBB to study the types of research and development incentives available in other states. The LBB must report its findings to the Legislature no later than Jan. 1, 2013.

Carryforward of Certain Franchise Tax Credits Extended

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 31 (Effective Sept. 28, 2011)

The expiration date for the carryforward of unused Job Creation Credits under former Subchapter P and Capital Investment Credits under former Subchapter Q has been extended from Dec. 31, 2012, to Dec. 31, 2016. The creation of new credits has not been allowed since Jan. 1, 2008.

\$1 Million No-Tax-Due Threshold Extended

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 37 (Effective Sept. 28, 2011)

The \$1 million no-tax-due threshold was to expire on Dec. 31, 2011. This provision extends the \$1 million threshold through Dec. 31, 2013. A \$600,000 no-tax-due threshold takes effect Jan. 1, 2014.

Note: Tax Code Section 171.006 requires that this threshold be adjusted on Jan. 1 of each even-numbered year based on the Consumer Price Index.

Nontaxable Unincorporated Political Committees

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 45 (Effective for reports originally due on or after Jan. 1, 2012)

Section 45.02 amends the definition of a taxable entity in Tax Code Section 171.0002 by adding an unincorporated political committee that is organized under the Election



Code or the provisions of the Federal Election Campaign Act of 1971 (2 U.S.C. Section 431 et seq.) to the list of entities in subsection (c) that are not subject to the tax.

Revenue Exclusion for Qualified Live Event Promotion Companies

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 45 (Effective for reports originally due on or after Jan. 1, 2012)

Section 45.03 allows a taxable entity that is a qualified live event promotion company to exclude from total revenue a payment made to an artist in connection with the provision of a live entertainment event or live event promotion services. Section 45.01 amends Tax Code Section 171.0001 to include definitions for “artist,” “live entertainment event,” “live event promotion services” and “qualified live event promotion company.”



Revenue Exclusion for Qualified Courier and Logistics Companies

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 45 (Effective for reports originally due on or after Jan. 1, 2012)

Section 45.03 allows a taxable entity that is a qualified courier and logistics company to exclude from total revenue subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity.

A “qualified courier and logistics company” is a taxable entity that:

- (1) receives at least 80 percent of the taxable entity’s annual total revenue from its entire business from a combination of at least two of the following courier and logistics services:
 - (A) expedited same-day delivery of an envelope, package, parcel, roll of architectural drawings, box or pallet;
 - (B) temporary storage and delivery of the property of another entity, including an envelope, package, parcel, roll of architectural drawings, box or pallet; and
 - (C) brokerage of same-day or expedited courier and logistics services to be completed by a person or entity under a contract that includes a contractual obligation by the taxable entity to make payments to the person or entity for those services;
- (2) is registered as a motor carrier under Chapter 643, Transportation Code, and if the taxable entity operates on an interstate basis, is registered as a motor carrier or broker under the unified carrier registration system, as defined by Section 643.001, Transportation Code, during that period;
- (3) maintains an automobile liability insurance policy covering individuals operating vehicles owned, hired, or otherwise used in the taxable entity’s business, with a combined single limit for each occurrence of at least \$1 million;
- (4) maintains at least \$25,000 of cargo insurance;
- (5) maintains a permanent nonresidential office from which the courier and logistics services are provided or arranged;
- (6) has at least five full-time employees during the period on which margin is based;
- (7) is not doing business as a livery service, floral delivery service, motor coach service, taxicab service, building supply delivery service, water supply service, fuel or energy supply service, restaurant supply service, commercial moving and storage company or overnight delivery service; and
- (8) is not delivering items that the taxable entity or an affiliated entity sold.



Apparel Rental Activities Classified as Retail Trade

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 51 (Effective for reports originally due on or after Jan. 1, 2012)

Article 51 amends the definition of “retail trade” in Tax Code Section 171.0001 to include *apparel rental activities* classified as Industry 5999 or Industry 7299 of the 1987 Standard Industrial Classification Manual. As a result, entities engaged in apparel rental may qualify to use the 0.5 percent tax rate prescribed by Tax Code Section 171.002.

Hotel Occupancy Tax

Cities and Counties May Receive 20 Percent of Delinquent State Hotel Tax Collected from Information Provided by a City or County

House Bill 2048 (Effective Sept. 1, 2011)

This bill amends sections in the state, municipal and county hotel occupancy tax laws (Tax Code Sections 156.2513, 351.008 and 352.008) to require a municipality or county to notify the Comptroller when an audit determines that a hotel failed to collect or pay state hotel occupancy tax. If the information results in collection of delinquent state hotel tax, the Comptroller will pay the municipality or county that provided the information an amount equal to 20 percent of the delinquent tax collected, not including penalty, interest or amounts paid under protest.

Municipalities, Counties and Third-Party Contractors May Audit Hotels after a 30-Day Written Notice

House Bill 2048 (Effective Sept. 1, 2011)

This bill amends the municipal and county hotel occupancy tax laws (Tax Code Sections 351.004 and 352.004) to provide that a city or county may audit a hotel for failure to file a hotel tax report. The city or county must give a hotel at least a 30-day written notice of an upcoming audit and may contract with a third party to conduct the audit.

The bill also provides that a city – instead of the city attorney or other attorney acting on behalf of the city – may bring suit against delinquent hotels.

Counties May Audit Hotels and Access Hotel Records after Giving Reasonable Notice

House Bill 2265 (Effective Sept. 1, 2011)

This bill amends the county hotel occupancy tax law (Tax Code Section 352.006) to authorize a county that imposes hotel tax to audit a hotel for tax compliance. After giving reasonable notice of intent to inspect a hotel’s books and records, the county may access the hotel’s books and records during business hours.

Oilfield Portable Unit Not Subject to Hotel Tax

House Bill 3182 (Effective Sept. 1, 2011)

This bill amends the hotel occupancy tax law (Tax Code Section 156.001) to define an oilfield portable unit and provide that an oilfield portable unit is subject to sales and use tax and not hotel occupancy tax. See the discussion of House Bill 3182 in the Sales and Use Tax – General section of this publication for more information.

Corpus Christi Qualifies as an Eligible Central Municipality

Senate Bill 977 (Effective May 28, 2011)

This bill amends sections of the Municipal Hotel Occupancy Taxes Law (Tax Code Section 351.001) to allow the city of Corpus Christi to qualify as an eligible central municipality (ECM).

An ECM is entitled, upon request, to receive a rebate of certain taxable proceeds that are paid or collected by a qualified hotel project and businesses located at the hotel project. Included are state and local sales and hotel occupancy taxes, and local ad valorem and mixed beverage taxes. The rebated taxes may be pledged as payment for obligations issued for the hotel project.

Separate Suspense Account Created to Rebate Eligible Taxable Proceeds for Hotel Projects

Senate Bill 977 (Effective May 28, 2011)

Under Tax Code Section 151.429(h), the owner of a qualified hotel project may receive a rebate of 100 percent of the sales and use taxes and hotel occupancy taxes paid or collected by a qualified hotel project during the first 10 years the hotel project is open. This bill amends subsection (h) to create a separate suspense account for the Comptroller to deposit these taxes, with rebates to be made at least monthly.

The bill also amends the Enterprise Zones Law (Government Code Chapter 2303) to create a separate suspense account outside the state treasury for the Comptroller to deposit eligible taxable proceeds for qualified hotel projects. Eligible taxable proceeds include state and local sales and hotel occupancy taxes, and local ad valorem and mixed beverage taxes that are generated by a qualified hotel project or businesses located at the hotel project. Rebates of eligible taxable proceeds will be quarterly.

Insurance Tax

Automobile Burglary and Theft Prevention Authority

House Bill 1541 (Effective Sept. 1, 2011)

This bill amends Article 4413(37) Vernon's Texas Civil Statutes and increases the Automobile Burglary and Theft Prevention Authority fee from \$1 to \$2 per motor vehicle year effective Sept. 1, 2011. The authority will receive 50 percent of this new fee with the excess remaining in the general revenue fund. The Sept. 1 effective date creates a split year for taxation purposes, with policies that are effective or renewed between July 1, 2011, and Aug. 31, 2011, assessed at the prior rate of \$1, and those effective or renewed on or after Sept. 1, 2011, assessed at the new rate of \$2.

Form 25-106 and the automated WebFile system will be updated to reflect the fee increase and the split year for the tax report that will be due March 1, 2012.

Surplus Lines – “Managing Underwriter” Definition Added

House Bill 3410 (Effective Jan. 1, 2012)

This bill amends Section 981.002 of the Insurance Code by adding a definition of a managing underwriter as “a surplus lines agent or agency that exercises, pursuant to a written agreement with an eligible surplus lines insurer, underwriting authority for the eligible surplus lines insurer and that derives the agent or for purposes of tax collection agency’s business from a surplus lines agent.”

This bill amends Section 225.006 of the Insurance Code to require a surplus lines agent who places a policy with a managing underwriter to collect, report and pay the tax to the Comptroller.

The bill also amends Section 981.223 of the Insurance Code and requires that the managing underwriter maintain records regarding this type of policy placement, including the name and license number of the surplus lines agent that placed the policy with the managing underwriter.



Examination and Evaluation Fee Tax Credits

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 2 (Effective Jan. 1, 2012)

Article 2 of this bill amends the Insurance Code, Sections 221.006, 222.007 and 223.009, that relate to insurance premium tax credits for examination or evaluation fees paid directly to the Texas Department of Insurance by property and casualty insurers; life, accident and health insurers; title insurers and health maintenance organizations. The premium tax credits for the payment of these expenses are disallowed for fees paid during calendar years 2012 and 2013 and will be reflected on the tax report due in March of 2013 and 2014. The tax credits for fees paid in 2011 will be allowed based on the statute in effect prior to the passage of this bill. The disallowance of these credits will be repealed on Jan. 1, 2014, at which time, without further action by the Legislature, the ability to claim premium tax credits for examination and evaluations fees paid after 2013 will be restored.

Conforming Language Regarding the Nonadmitted and Reinsurance Reform Act (NRRA)

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 18 applies to policies issued on or after July 21, 2011. (Effective Sept. 28, 2011)

Article 18 of this bill adds definitions to Insurance Code Chapters 225 and 226 which address surplus lines and independently procured insurance taxes.

The provisions of the Nonadmitted and Reinsurance Reform Act (NRRA) are effective July 21, 2011. Senate Bill 1 amends Texas statutes to conform to the federal provisions that preempt state statutes regarding the regulation and taxation of non-admitted insurance business on multi-state policies. This will affect the way surplus lines agents and agencies remit insurance premium taxes on these policies. Under the federal law, only the home state of the insured can require premium tax on a multi-state policy; however, states may join an agreement or compact to allocate the taxes among the various states afforded coverage under the policy.

The bill defines independently procured insurance as, “insurance procured directly by an insured from a nonadmitted insurer.” The impact of this definition is that any policy in which an agent is involved cannot be independently procured and should be treated as surplus lines business. The independently procured insured is responsible for remitting the taxes to its home state.

Mixed Beverage Gross Receipts Tax

Separate Statement of Tax to be Paid Allowed

House Bill 2033 (Effective June 17, 2011)

This bill amends the Tax Code Section 183.0212 to allow mixed beverage and private club permit holders to include a separate statement on a customer’s sales invoice, billing, service check, ticket or other receipt that discloses the amount of mixed beverage tax to be paid by the permittee on that sale. The mixed beverage tax disclosure statement is for informational purposes only. The tax may not be separately charged to or paid by the customer, and may not be shown as part of the calculation of charges to a customer on the invoice, receipt or bill. This includes a charge labeled a “Tax Reimbursement.”

Mixed Beverage Gross Receipts Tax Prepayment Required in August 2013

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 10 (Effective Oct. 1, 2011)

Mixed beverage permit holders are required to make a prepayment of the mixed beverage taxes normally due in September 2013 in an amount equal to 25 percent of the mixed beverage gross receipts tax that is due on their July 2013 return. The tax payment, due on or before Aug. 20, 2013, is equal to their regular July payment, plus the 25 percent prepayment.



Permit holders may take a credit on their August report (due in September) that is equal to the amount of any prepayment.

Motor Fuels Taxes

Motor Fuels Tax Prepayment Required in August 2013

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 9 (Effective Oct. 1, 2011)

On or before Aug. 28, 2013, each licensed distributor and licensed importer is required to remit to the licensed supplier or licensed permissive supplier, as applicable, a tax prepayment equal to 25 percent of the tax for gasoline or diesel fuel removed at the terminal rack during the month of July 2013. A supplier must also remit a tax prepayment equal to 25 percent of the tax on gasoline or diesel fuel removed from a terminal for distribution in Texas. A permissive supplier must also remit a tax prepayment equal to 25 percent of the tax on gasoline or diesel fuel removed from their inventory in an out-of-state terminal for delivery into Texas. The supplier or permissive supplier must pay the tax received from distributors and importers, and tax due on their own removals from the terminal, to the Comptroller's office by electronic funds transfer (EFT) on or before Aug. 30, 2013.

A distributor, importer, supplier or permissive supplier may not account for any credit or allowance to which it is normally entitled. Taxpayers who submit their prepayment may take a credit on their August report (due in September) that is equal to the amount of any prepayment. Taxpayers may also take credit for any credits or allowances to which they are normally entitled.



Motor Vehicle Sales and Use Tax

Agriculture/Timber Registration – Tax Exemption

House Bill 268 (Effective Sept. 1, 2011; Registration requirement effective Jan. 1, 2012)

To qualify for motor vehicle sales or use tax exemption, farmers, ranchers and timber operators must register with the Comptroller and obtain a registration number according to changes to Tax Code Chapter 151.

Registration numbers must be indicated on the Application for Certificate of Title (Form 130-U) in Section 21, the “Exemption claimed under the Motor Vehicle Sales and Use Tax Law because...” This includes vehicles purchased to be leased to qualifying farmers, ranchers and timber operators. Vendors and county tax assessor-collectors will be able to verify registration numbers through an online system.

Custom Vehicles and Street Rods

House Bill 890 (Effective Sept. 1, 2011)

Amendments to the Transportation Code provide that custom vehicles and street rods are now eligible for specialty plates. Because motor vehicles eligible for the specialty registration are excluded from Standard Presumptive Value (SPV) tax calculation procedures under the Tax Code, tax is due on the total consideration.

Tax Due Date

House Bill 2357 (Effective Jan. 1, 2012)

Amendments to the Transportation Code provide for motor vehicle titles and registration to be transferred within 30 calendar days from the date of Texas purchase or being brought into this state. Previously, the transfer was due within 20 county working days. Because motor vehicle tax is paid at the time of title transfer, the tax imposed on a sale (or use) in Texas will also be due within 30 calendar days. Active duty military personnel continue to have 60 calendar days to submit the tax.

Oilfield Portable Units

House Bill 3182 (Effective Sept. 1, 2011)

Oilfield portable units, which include trailers designed to be used as temporary lodging or temporary office space, are now excluded from being taxed as motor vehicles, but only when used exclusively at oil, gas, water disposal or injection well sites. These units are subject to sales and use tax under Chapter 151 of the Tax Code. Portable units used elsewhere remain taxed as motor vehicles.

Tax on Gifts of Motor Vehicles

Senate Bill 267 (Effective Immediately)

When transferring title to a motor vehicle acquired as a gift, either the recipient or donor must now file the Affidavit of Motor Vehicle Gift Transfer (Form 14-317) in person. A donor includes a person authorized to act on behalf of an estate in an inheritance. A title service required to be licensed under the Transportation Code may not file the affidavit.

The person filing the affidavit must present a current identification (ID) document containing the person's photo. Acceptable ID is limited to one of the following:

- a drivers license or personal ID card from Texas or another U.S. state;
- an original U.S. or foreign country passport;
- an ID card or similar form of identification issued by the Texas Department of Criminal Justice;
- a U.S. Military ID card; or
- an ID card or document issued by the Department of Homeland Security or U.S. Citizenship and Immigration Services.

Petroleum Products Delivery Fee

Petroleum Products Delivery Fee Reauthorized and Made Permanent

House Bill 2694 (Effective Sept. 1, 2011)

This bill reauthorizes the fee on the delivery of certain petroleum products that is set to expire on Aug. 31, 2011, and changes the current fee levels to caps. The Texas Commission on Environmental Quality (TCEQ) is required to set the amount of the fee by rule at no more than the amount necessary to cover the agency's cost to administer the program, as indicated by the amount appropriated by the Legislature from the petroleum storage tank remediation account for that purpose. The current fees relating to the delivery of petroleum products will remain in effect until TCEQ adopts rules. The fee will apply to petroleum products withdrawn from a bulk facility and delivered into a cargo tank or barge, or imported into Texas.

Sales and Use Tax – General

Dairy Farm Buildings

House Bill 268 and House Bill 2810 (Effective Sept. 1, 2011)

Tax Code Section 151.316 is amended to create a new exemption from sales and use tax for tangible personal property incorporated into or attached to a free-stall dairy barn or a dairy structure used solely for maternity purposes that is located on a commercial dairy farm and is used or employed exclusively for the production of milk.

Tax Exemption Registration Requirement for Agricultural and Timber Operations

House Bill 268 (Effective Sept. 1, 2011)

Beginning Jan. 1, 2012, a person claiming an exemption from sales tax on the purchase of certain items used in the production of agricultural and timber products must provide a registration number issued by the Comptroller on the exemption



certificate issued to the seller. Sign up to be notified when the application to obtain the new registration number is available at www.window.state.tx.us/subscribe.

Use of Internet Hosting Does Not Create Nexus

House Bill 1841 (Effective Immediately)

This bill provides that a person whose only activity in this state is as a user of Internet hosting is not engaged in business in Texas.

Oilfield Portable Units

House Bill 3182 (Effective Sept. 1, 2011)

This bill amends Tax Code Section 151.308 to provide that oilfield portable units, as defined in Tax Code Chapter 152.001(20), are subject to sales and use tax rather than motor vehicle or hotel occupancy taxes.

An “oil field portable unit” is a bunkhouse, manufactured home, trailer or semi-trailer (other than a travel trailer) designed to be used for temporary lodging or as temporary office space that is used exclusively at any oil, gas, water disposal or injection well site to provide to well site employees, contractors or other workers sleeping accommodations or temporary work space, including office space; which does not require attachment to a foundation or to real property to be functional.

Bunkhouses, trailers, semi-trailers and manufactured housing used anywhere other than at a well site for sleeping accommodations or work space continue to be subject to motor vehicle, hotel occupancy and/or sales tax as applicable.

Texas Licensed Customs Brokers and Exports

Senate Bill 776 (Effective Sept. 1, 2011)

This bill makes numerous revisions to the requirements outlined in Chapter 151 that a Texas Licensed Customs Broker must follow when issuing proof of export documentation a purchaser can use to obtain a refund of Texas sales and use tax.

The new provisions raise the price of export stamps to \$2.10 and prohibit a customs broker from using any method other than the Comptroller’s password-protected website for preparing export documentation, except when that website is unavailable due to technical or communications problems, if the Comptroller provides prior authorization for each use.

The bill also requires the purchaser to provide a passport, laser visa identification card or foreign voter registration picture identification that contains a unique identification number for the purchaser to the customs broker when obtaining export documentation.

Volunteer Fire Department Fundraisers

Senate Bill 1927 (Effective Immediately)

This bill amends the Tax Code to add a temporary provision, set to expire Sept. 1, 2014, authorizing a volunteer firefighter organization that qualifies for a sales and use tax exemption under Tax Code Section 151.310(a)(4) to hold 10 tax-free sales or auctions during a calendar year, with each tax-free sale or auction limited to a duration of not more than 72 hours.

Repeal of Sales and Franchise Tax Refunds for Economic Development

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 3 (Effective Oct. 1, 2011)

Subchapter F of Tax Code Chapter 111 is repealed. Beginning Oct. 1, 2011, Texas property owners will no longer be eligible to receive refunds of state sales and use taxes and franchise taxes for paying local school property taxes on property located in reinvestment zones established under Tax Code Chapter 312. The repeal does not affect



an eligible person's right to request a refund of taxes paid prior to Oct. 1, 2011, subject to the statute of limitations, for any calendar year in which the person paid ad valorem taxes to a school district. Such claims will be governed under the law in effect on the date the right to claim the refund was established (i.e., the law prior to its repeal).

Definition of "Sale for Resale" Amended

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 12 (Effective Oct. 1, 2011)

Tax Code Section 151.006 is amended to clarify that the resale exemption can be claimed on the purchase of taxable items (i.e., tangible personal property, taxable services) that will be resold as or with a taxable item.

The amendment also outlines the requirements that must be met in order to claim the resale exemption on items purchased to be used in the performance of contracts with the federal government and clarifies that a sale for resale does not include a sale of tangible personal property or a taxable service to a purchaser who acquires it for the purpose of performing a non-taxable service, regardless of whether title transfers to the purchaser's customer.

Sales Tax Prepayment Required in August 2013

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 13 (Effective Sept. 28, 2011)

In August 2013, all taxpayers who file monthly sales tax reports and who pay the sales taxes due that month (for the July 2013 reporting period) to the Comptroller by electronic funds transfer (EFT) will be required to submit a one-time prepayment of tax.

The amount of the prepayment due will be equal to 25 percent of the amount of sales tax the taxpayer owes for the July reporting period, as reported on the report due Aug. 20, 2013. The taxpayer is required to remit the additional prepayment at the same time as the regular payment for the July sales tax report: on or before Aug. 20, 2013.

Taxpayers who submit the prepayment will receive credits for the prepaid taxes when they file the August report in September 2013. Taxpayers who normally prepay, as provided by Tax Code Section 151.424, are not affected by this provision.

Definitions of "Seller," "Retailer" and "Engaged in Business" Amended

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 30 (Effective Jan. 1, 2012)

Tax Code Section 151.008(b) is amended to provide that the terms "seller" and "retailer" include a person who, by agreement with an owner of tangible personal property, has been entrusted with possession of and authority to sell, lease or rent the property without additional action on the part of the owner.

The article also amends Section 151.107 to provide that a "retailer engaged in business in this state" includes a retailer who:

- (1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, exchanging returned merchandise; or
- (2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse or similar location in this state that delivers property sold by the retailer.



The new 151.107(d) provides that “ownership” includes direct ownership, common ownership and indirect ownership through a parent entity, subsidiary or affiliate; and defines “substantial” to mean a 50 percent ownership interest with the type of ownership (i.e., beneficial, combined voting power, etc.) determined by the type of entity.

Clothing and School Supplies Sales Tax Holiday Change: New Dates Beginning in 2012

Senate Bill 1, 82nd Legislature, 1st Called Session

Article 33 (Effective Sept. 28, 2011)

Previously the 2011 Legislative Update reported the 2012 Sales Tax Holiday would take place in July, due to legislative changes affecting the start date.

Since that time, we received [clarification](#) of the legislative intent of those changes, and confirmed the Sales Tax Holiday should remain in August, nearer to the beginning date of the school year for the majority of Texas school districts.

The 2012 Sales Tax Holiday is scheduled for Aug. 17 through Aug. 19.



Sales and Use Tax – Local Tax

El Paso Municipal Sales Tax Authorized on Fort Bliss without Annexation

House Bill 205 (Effective July 1, 2011)

House Bill 205 amends current law relating to municipal and municipal transit department local sales and use taxes to allow the imposition of El Paso municipal sales and use tax on the Fort Bliss federal military installation, which lies within the city’s extraterritorial jurisdiction, without requiring full annexation of the area by the city or the imposition of the municipal transit tax within the area.

Transportation Reinvestment Zones – Local Sales Tax Funding Authorized

House Bill 563 (Effective Sept. 1, 2011)

In 2007, with the passage of Senate Bill 1266, the Texas Legislature authorized cities and counties which intended to complete a pass-through finance project for the construction of local road projects the option of designating an area adjacent to the road project as a transportation reinvestment zone (TRZ). Through a TRZ, the sponsoring entity is allowed to capture a portion of the property tax revenues resulting from the increased property values that occur as a result of the new road project.

House Bill 563 allows a city or county to determine a portion or amount of tax increment generated from the sales and use taxes imposed by a municipality under Tax Code Section 321.101(a) or by a county under Tax Code Chapter 323 attributable to the zone, above the sales tax base, to be used for TRZ project funding.

Definition of a “Place of Business”

House Bill 590 (Effective Sept. 1, 2011)

Texas Tax Code Section 321.002 is amended to provide that any business location that contracts with a retail or commercial business to process invoices, purchase orders, bills of lading or other equivalent records onto which sales tax is added (including an office operated for the purpose of buying and selling taxable goods to be used by the retail or commercial business) is not a “place of business of the retailer” if the Comptroller determines that the location functions to avoid the tax imposed by Chapter 321 or to rebate a portion of such tax to the contracting business.

We have added document 201108160L to our State Automated Tax Research System (STAR) which explains how local sales and use tax is to be allocated when items are obtained through use of a purchasing office given the change in law due to HB 590. Rule 3.286 will be updated accordingly.

Local Tax Reallocation and Refund Information for Local Governmental Entities

House Bill 590 (Effective Sept. 1, 2011)

This bill amends Tax Code Chapters 321, 322 and 323 to allow a local governmental entity to request a review of all sales tax returns and reports filed by not more than five taxpayers that relate to certain reallocations and refunds of local sales tax revenue from the local entity. The bill also authorizes the Comptroller to set and collect a reasonable fee from local governmental entities for the expense of compiling and providing the information.

New Sections 321.510, 322.108(a)(10) and 323.510 provide that a local governmental entity may request related tax returns and reports for review if the Comptroller reallocates or refunds tax revenues that equal the lesser of:

- \$200,000;
- 10 percent of the revenue received by the entity during the prior calendar year; or
- an amount that changes the revenue received during a calendar month by more than 15 percent as compared with the same month in any previous year.

Provision of confidential information to the local governmental entity under the new sections will not affect the confidential nature of the information.

County Assistance Districts

Senate Bill 520 (Effective Immediately)

This bill makes several amendments to the Local Government Code provisions regarding county assistance districts, including authorization to create more than one county assistance district in a county; authorization for a county assistance district to enter into agreements with municipalities as necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate and allocation between the district and the municipality of sales and use taxes; and removal of the cap of one-half percent on the rate of sales and use tax a county assistance district can impose to now allow imposition of sales and use tax by a county assistance district in one or more increments of one-eighth of 1 percent.

Sales Tax Information for Local Jurisdictions

Senate Bill 758 (Effective Sept. 1, 2011)

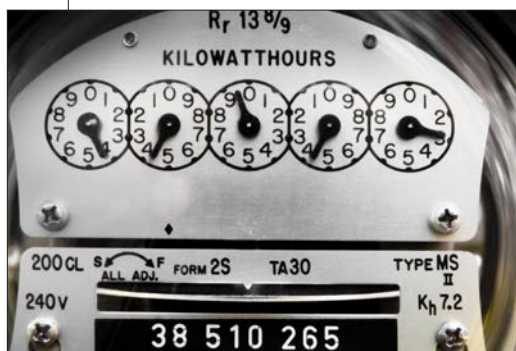
This legislation requires the Comptroller, upon request from a local governmental entity, to provide information relating to the amount of sales tax paid to the local governmental entity during the preceding calendar year by each entity doing business in the city that remits annual sales tax payments of more than \$5,000 to the Comptroller.

East Aldine Management District

Senate Bill 900 (Effective Immediately)

This bill renames the Aldine Improvement District as the "East Aldine Management District" and authorizes the board of the district to establish one or more areas in the district as a special sales and use tax zone if the board finds that a reasonable distinction exists that justifies a special sales and use tax rate in the area. The bill authorizes the special sales and use tax rate in the zone to be different from the sales and use tax rate imposed in the rest of the district if the special sales and use tax rate is approved by a majority of the voters of the zone at an election held for that purpose.

The bill also provides an exemption from a special sales and use tax on the sale, production, distribution, lease or rental of; and the use, storage or other consumption within a special sales and use tax zone of; a taxable item sold, leased or rented by:



- a retail electric provider as defined by Section 31.002 (Definitions), Utilities Code;
- an electric utility or a power generation company as defined by Section 31.002, Utilities Code;
- a gas utility as defined by Section 101.003 (Definitions) or 121.001 (Definition of Gas Utility), Utilities Code, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;
- a person who owns pipelines used for the transportation or sale of carbon dioxide;
- a telecommunications provider as defined by Section 51.002 (Definitions), Utilities Code; or
- a cable service provider or video service provider as defined by Section 66.002 (Definitions), Utilities Code.

Emergency Service Districts – Sales and Use Tax Subdistricts Authorized

Senate Bill 917 (Effective Immediately)

Senate Bill 917 provides that if two or more emergency services districts with different sales and use tax rates consolidate into a single district, the board of the consolidated district may designate the territory of the former districts as subdistricts and continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district prior to consolidation. The district must send to the Comptroller, by registered or certified mail, a copy of the joint order of consolidation and a map of the consolidated district that clearly shows the territory of each subdistrict.

Strategic Partnership Agreements between Municipalities and Water Districts

Senate Bill 1082 (Effective Sept. 1, 2011)

This bill amends Local Government Code Section 43.0751(a) to expand the types of water districts that are eligible to enter into strategic partnership agreements (SPAs) with a municipality under which the municipality will provide certain services in the district in exchange for imposition of the municipality's sales and use tax in the district territory that is within the municipality's extraterritorial jurisdiction. Previously, only municipal utility districts and water control improvement districts were allowed to enter into SPAs.

County Transportation Authorities – Tax Increment Funding for Municipal Service Plan Participation

Senate Bill 1422 (Effective Sept. 1, 2011)

This bill allows a county transportation authority, in exchange for all or some of the tax increment in the area, to implement a service plan in an area of a municipality that has not adopted the transportation authority's sales and use tax if adoption of the authority's tax by the municipality would cause the total local sales tax rate to exceed 2 percent in any location in the municipality.

The bill adds Subchapter I to Transportation Code Chapter 460 to define "tax increment" as the amount of revenue generated from ad valorem taxes or from sales and use taxes imposed by a municipality under Tax Code Section 321.101(a) that are attributable to a public transportation financing area (PTFA) that exceeds the amount attributable to the area for the year in which the area was designated.



Sales and Use Tax – Local Jurisdictions Authorized

The Legislature authorized the creation of the following new special purpose districts that can levy local sales and use taxes, effective immediately:

Bridgeland Management District
House Bill 3842

CLL Municipal Utility District
House Bill 3845

**Fulshear Town Center
Management District**
House Bill 3827

Lajitas Utility District No 1
House Bill 3804

Rio de Vida Municipal Utility District
Senate Bill 768

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Motor Vehicle Sales Surcharge,
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**Texas Comptroller of Public Accounts
Publication #96-237-3
Revised February 2012**

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