

By: McCall

H.B. No. 2424

A BILL TO BE ENTITLED

1 AN ACT

2 relating to technical changes to taxes and fees administered by the
3 comptroller; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 161.122, Health and Safety Code, is
6 amended by adding Subsection (f) to read as follows:

7 (f) A person commits an offense if the person places or
8 authorizes the placement of a sign in violation of this section. An
9 offense under this subsection is a Class C misdemeanor.

10 SECTION 2. Article 1.16(b), Insurance Code, is amended to
11 read as follows:

12 (b) Assessments for the expenses of such domestic
13 examination which shall be sufficient to meet all the expenses and
14 disbursements necessary to comply with the provisions of the laws
15 of Texas relating to the examination of insurance companies and to
16 comply with the provisions of this Article and Articles 1.17 and
17 1.18 of this Code, shall be made by the State Board of Insurance
18 upon the corporations or associations to be examined taking into
19 consideration annual premium receipts, and/or admitted assets that
20 are not attributable to 90 percent of pension plan contracts as
21 defined in Section 818(a) of the Internal Revenue Code of 1986 (26
22 U.S.C. Section 818(a)), and/or insurance in force; provided such
23 assessments shall be made and collected as follows: (1) expenses
24 attributable directly to a specific examination including

1 employees' salaries and expenses and expenses provided by Article
2 1.28 of this Code shall be collected at the time of examination;
3 (2) assessments calculated annually for each corporation or
4 association which take into consideration annual premium receipts,
5 and/or admitted assets that are not attributable to 90 percent of
6 pension plan contracts as defined in Section 818(a) of the Internal
7 Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance
8 in force shall be assessed annually for each such corporation or
9 association. In computing the assessments, the board may not
10 consider insurance premiums for insurance contracted for by a state
11 or federal governmental entity to provide welfare benefits to
12 designated welfare recipients or contracted for in accordance with
13 or in furtherance of Title 2, Human Resources Code, or the federal
14 Social Security Act (42 U.S.C. Section 301 et seq.). The amount of
15 all examination and evaluation fees [~~the assessments~~] paid in each
16 taxable year to [~~or for the use of~~] the State of Texas by an [~~any~~]
17 insurance carrier [~~corporation or association hereby affected~~]
18 shall be allowed as a credit on the amount of premium taxes due
19 under this article [~~to be paid by any such insurance corporation or~~
20 ~~association for such taxable year except as provided by Article~~
21 ~~1.28 of this Code~~]. The limitations provided by Sections
22 803.007(1) and (2)(B) of this code for domestic insurance companies
23 apply to foreign insurance companies.

24 SECTION 3. Section 1, Article 4.10, Insurance Code, is
25 amended to read as follows:

26 Sec. 1. PAYMENT OF TAX. Every insurance carrier, including
27 Lloyd's and reciprocal or interinsurance exchanges and any other

1 organization or concern receiving gross premiums from the business
2 of fire, marine, marine inland, accident, credit, livestock,
3 fidelity, guaranty, surety, casualty, workers' compensation,
4 employers' liability, or any other kind or character of insurance,
5 except title insurance and except as provided in Sections 2, 3, and
6 4 of this article, shall pay to the comptroller a tax upon such
7 gross premium receipts as provided in this article. Any such
8 insurance carrier doing other kinds of insurance business shall pay
9 the tax levied upon its gross premiums received from such other
10 kinds of business as provided in Articles 4.03 and 4.11 of this
11 code.

12 SECTION 4. Section 13, Article 4.10, Insurance Code, is
13 amended to read as follows:

14 Sec. 13. EXAMINATION AND EVALUATION FEE CREDITS. The
15 amount of all examination and evaluation fees paid in each taxable
16 year to ~~[or for the use of]~~ the State of Texas by an insurance
17 carrier shall be allowed as a credit on the amount of premium taxes
18 due under this article ~~[except as provided by Article 1.28 of this~~
19 ~~code]~~. The limitations provided by Sections 803.007(1) and (2)(B)
20 of this code for domestic insurance companies apply to foreign
21 insurance companies. Any credit allowed by the provisions of this
22 section is in addition to any other credits allowable by statute.

23 SECTION 5. Section 8, Article 4.11, Insurance Code, is
24 amended to read as follows:

25 Sec. 8. EXAMINATION AND EVALUATION ~~[VALUATION]~~ FEES ALLOWED
26 AS CREDITS. The amount of all examination and evaluation
27 ~~[valuation]~~ fees paid in ~~[during]~~ each taxable ~~[tax]~~ year to ~~[or for]~~

1 ~~the use of]~~ the State of Texas by an insurance carrier shall be
2 allowed as a credit on the amount of premium taxes due under this
3 article [~~except as provided by Article 1.28 of this code~~]. The
4 limitations provided by Sections 803.007(1) and (2)(B) of this code
5 for domestic insurance companies apply to foreign insurance
6 companies. Any credit allowed by the provisions of this section is
7 in addition to any other credits allowable by statute.

8 SECTION 6. Article 4.17(a), Insurance Code, is amended to
9 read as follows:

10 (a) The commissioner shall annually determine the rate of
11 assessment of a maintenance tax to be paid on an annual, semiannual,
12 or other periodic basis, as determined by the comptroller. The rate
13 of assessment may not exceed .04 percent of the correctly reported
14 gross premiums of life, health, and accident insurance coverages
15 and the gross considerations for annuity and endowment contracts
16 collected by all authorized insurers writing life, health, and
17 accident insurance, annuity, or endowment contracts in this state.
18 The comptroller shall collect the maintenance tax. For purposes of
19 this article, the gross premiums on which an assessment is based may
20 not include:

21 (1) premiums received from this state or the United
22 States for insurance contracted for by this state or the United
23 States for the purpose of providing welfare benefits to designated
24 welfare recipients or for insurance contracted for by this state or
25 the United States in accordance with or in furtherance of Title 2,
26 Human Resources Code, or the federal Social Security Act (42 U.S.C.
27 Section 301 et seq.); or

1 (2) premiums paid on group health, accident, and life
2 policies in which the group covered by the policy consists of a
3 single nonprofit trust established to provide coverage primarily
4 for employees of:

5 (A) a municipality, county, or hospital district
6 in this state; or

7 (B) a county or municipal hospital, without
8 regard to whether the employees are employees of the county or
9 municipality or of an entity operating the hospital on behalf of the
10 county or municipality.

11 SECTION 7. Section 7, Article 9.59, Insurance Code, is
12 amended to read as follows:

13 Sec. 7. EXAMINATION AND EVALUATION FEE CREDITS. The amount
14 of all examination and evaluation fees paid in each taxable year to
15 ~~[or for the use of]~~ the State of Texas by a title insurance company
16 shall be allowed as a credit on the amount of premium taxes due
17 under this article ~~[except as provided by Article 1.28 of this~~
18 ~~code].~~ The limitations provided by Sections 803.007(1) and (2)(B)
19 of this code for domestic insurance companies apply to foreign
20 insurance companies. Any credit allowed by this section is in
21 addition to any other credits allowed by law.

22 SECTION 8. Article 20A.33(d), Insurance Code, is amended to
23 read as follows:

24 (d) The commissioner shall annually determine the rate of
25 assessment of a per capita maintenance tax to be paid on an annual
26 or semiannual basis, on the correctly reported gross revenues for
27 the issuance of health maintenance certificates or contracts

1 collected by all authorized health maintenance organizations
2 issuing such coverages in this state. The rate of assessment may
3 not exceed \$2 for each enrollee. The rate of assessment may differ
4 between basic health care plans, limited health care service plans,
5 and single health care service plans and shall equitably reflect
6 any differences in regulatory resources attributable to each type
7 of plan. The comptroller shall collect the maintenance tax. For
8 purposes of this section, the amount of maintenance tax assessed
9 may not be computed on:

10 (1) enrollees who as individual certificate holders or
11 their dependents are covered by a master group policy paid for by
12 revenues received from this state or the United States for
13 insurance contracted for by this state or the United States for the
14 purpose of providing welfare benefits to designated welfare
15 recipients or for insurance contracted for by this state or the
16 United States in accordance with or in furtherance of Title 2, Human
17 Resources Code, or the federal Social Security Act (42 U.S.C.
18 Section 301 et seq.); or

19 (2) revenues paid on group health, accident, and life
20 certificates or contracts in which the group covered by the
21 certificate or contract consists of a single nonprofit trust
22 established to provide coverage primarily for employees of:

23 (A) a municipality, county, or hospital district
24 in this state; or

25 (B) a county or municipal hospital, without
26 regard to whether the employees are employees of the county or
27 municipality or of an entity operating the hospital on behalf of the

1 county or municipality.

2 SECTION 9. Section 101.053(b), Insurance Code, as effective
3 June 1, 2003, is amended to read as follows:

4 (b) Sections 101.051 and 101.052 do not apply to:

5 (1) the lawful transaction of surplus lines insurance
6 under Chapter 981;

7 (2) the lawful transaction of reinsurance by insurers;

8 (3) a transaction in this state that:

9 (A) involves a policy that:

10 (i) is lawfully solicited, written, and
11 delivered outside this state; and

12 (ii) covers, at the time the policy is
13 issued, only subjects of insurance that are not resident, located,
14 or expressly to be performed in this state; and

15 (B) takes place after the policy is issued;

16 (4) a transaction:

17 (A) that involves an insurance contract
18 independently procured by the insured from an insurance company not
19 authorized to do insurance business in this state through
20 negotiations occurring entirely outside this state;

21 (B) that is reported; and

22 (C) on which premium tax is paid in accordance
23 with this chapter;

24 (5) a transaction in this state that:

25 (A) involves group life, health, or accident
26 insurance, other than credit insurance, and group annuities in
27 which the master policy for the group was lawfully issued and

1 delivered in a state in which the insurer or person was authorized
2 to do insurance business; and

3 (B) is authorized by a statute of this state;

4 (6) an activity in this state by or on the sole behalf
5 of a nonadmitted captive insurance company that insures solely:

6 (A) directors' and officers' liability insurance
7 for the directors and officers of the company's parent and
8 affiliated companies;

9 (B) the risks of the company's parent and
10 affiliated companies; or

11 (C) both the individuals and entities described
12 by Paragraphs (A) and (B);

13 (7) the issuance of a qualified charitable gift
14 annuity under Chapter 102; or

15 (8) a lawful transaction by a servicing company of the
16 Texas workers' compensation employers' rejected risk fund under
17 Section 4.08, Article 5.76-2, as that article existed before its
18 repeal.

19 SECTION 10. Section 912.002(b), Insurance Code, as
20 effective June 1, 2003, is amended to read as follows:

21 (b) A county mutual insurance company is subject to:

22 (1) Sections 38.001 and 822.204; and

23 (2) Articles 1.15, 1.15A, 1.16, 1.35B, 2.10, 4.10,
24 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49.

25 SECTION 11. Section 376.470, Local Government Code, as
26 added by Chapter 1433, Acts of the 77th Legislature, Regular
27 Session, 2001, is amended by adding Subsection (d) to read as

1 follows:

2 (d) Chapter 321, Tax Code, applies to the imposition,
3 computation, administration, enforcement, and collection of the
4 sales and use tax imposed by this section except to the extent it is
5 inconsistent with this chapter.

6 SECTION 12. Section 2153.153(a), Occupations Code, is
7 amended to read as follows:

8 (a) A license applicant must file with the comptroller a
9 license application that:

10 (1) contains a complete statement about the ownership
11 of the business that is the subject of the application, including:

12 (A) the nature of the business entity; and

13 (B) except as provided by Subsection (b), the
14 name and residence address of each person who has a financial
15 interest in the business, including the nature, type, and extent of
16 the interest;

17 (2) designates:

18 (A) an individual, as described by Subsection
19 (c), responsible for maintaining a record of and reporting to the
20 comptroller information as required by Section 2153.202; and

21 (B) an office located in this state where the
22 applicant proposes to maintain the records required by this
23 chapter, a rule adopted under this chapter, or other law;

24 (3) is accompanied by:

25 (A) a written statement executed by the
26 individual designated under Subdivision (2) that the individual
27 accepts the responsibility described by that subdivision; and

1 (B) a cashier's check, ~~[or]~~ money order, personal
2 check, or other method of payment authorized by the comptroller, in
3 an amount equal to the annual license fee under Section 2153.154;

4 (4) includes any other relevant information required
5 by the comptroller; and

6 (5) states that the information contained in the
7 application is true and correct.

8 SECTION 13. Section 111.0046, Tax Code, is amended to read
9 as follows:

10 Sec. 111.0046. ~~[REFUSAL TO]~~ PERMIT OR LICENSE. (a) The
11 comptroller shall refuse to issue or renew any permit or license to
12 a person who:

13 (1) is not permitted or licensed as required by law for
14 a different tax or activity administered by the comptroller, except
15 if the issuance or renewal of such license or permit is pending
16 before the comptroller; or

17 (2) is currently delinquent in the payment of any tax
18 collected by the comptroller.

19 (b) The comptroller by rule may establish a minimum age for
20 a person to be eligible to apply for a permit or license issued by
21 the comptroller.

22 SECTION 14. Sections 111.012(a) and (g), Tax Code, are
23 amended to read as follows:

24 (a) If the comptroller finds that a tax imposed by this
25 title is insecure, the comptroller may require a taxpayer ~~[who is~~
26 ~~delinquent in the payment of the tax]~~ to:

27 (1) provide security for the payment of taxes; or

1 (2) establish a tax escrow account at a bank or other
2 financial institution.

3 (g) If a taxpayer does not furnish security to the
4 comptroller or establish a tax escrow account as required by the
5 comptroller before the expiration of 10 days following the day on
6 which notice is received, the comptroller may:

7 (1) bring suit in a district court in Travis County for
8 an order enjoining the taxpayer from engaging in business until the
9 security is furnished or the tax escrow account is established; or

10 (2) pursue any other remedies or collection actions
11 available to the comptroller under this chapter or Chapter 113 to
12 ensure the security is furnished or the tax escrow account is
13 established. [~~Venue for a suit under this section is in Travis~~
14 ~~County.~~]

15 SECTION 15. Section 113.006(b), Tax Code, is amended to
16 read as follows:

17 (b) One tax lien notice is sufficient to cover all taxes of
18 any [the same] nature administered by the comptroller, including
19 penalty and interest computed by reference to the amount of tax,
20 that may have accrued before or after the filing of the notice.

21 SECTION 16. Section 151.0035, Tax Code, is amended to read
22 as follows:

23 Sec. 151.0035. "DATA PROCESSING SERVICE." "Data processing
24 service" includes word processing, data entry, data retrieval, data
25 search, information compilation, payroll and business accounting
26 data production, the performance of a totalisator service with the
27 use of computational equipment [~~equipment~~] required by the Texas

1 Racing Act (Article 179e, Vernon's Texas Civil Statutes), and other
2 computerized data and information storage or manipulation. "Data
3 processing service" also includes the use of a computer or computer
4 time for data processing whether the processing is performed by the
5 provider of the computer or computer time or by the purchaser or
6 other beneficiary of the service. "Data processing service" does
7 not include the transcription of medical dictation by a medical
8 transcriptionist. "Data storage," as used in this section, does not
9 include a classified advertisement, banner advertisement, vertical
10 advertisement, or link when the item is displayed on an Internet
11 website owned by another person.

12 SECTION 17. Section 151.005, Tax Code, is amended to read as
13 follows:

14 Sec. 151.005. "SALE" OR "PURCHASE." "Sale" or "purchase"
15 means any of the following when done or performed for
16 consideration:

17 (1) a transfer of title or possession of tangible
18 personal property;

19 (2) the exchange, barter, lease, or rental of tangible
20 personal property;

21 (3) the performance of a taxable service, the charge
22 for an extended warranty or service contract for the performance of
23 a taxable service, or, in the case of an amusement service, a
24 transfer of title to or possession of a ticket or other admission
25 document, the collection of an admission fee, whether by individual
26 performance, subscription series, or membership privilege, the
27 collection of dues or a fee, charge, or assessment, including an

1 initiation fee, by a club or organization for membership or a
2 special privilege, status, or membership classification in the club
3 or organization, or the use of a coin-operated machine;

4 (4) the production, fabrication, processing,
5 printing, or imprinting of tangible personal property for consumers
6 who directly or indirectly furnish the materials used in the
7 production, fabrication, processing, printing, or imprinting;

8 (5) the furnishing and distribution of tangible
9 personal property by a social club or fraternal organization to
10 anyone;

11 (6) the furnishing, preparation, or service of food,
12 meals, or drinks;

13 (7) a transfer of the possession of tangible personal
14 property if the title to the property is retained by the seller as
15 security for the payment of the price; or

16 (8) a transfer of the title or possession of tangible
17 personal property that has been produced, fabricated, or printed to
18 the special order of the customer.

19 SECTION 18. Section 151.056, Tax Code, is amended by adding
20 Subsection (f) to read as follows:

21 (f) A contractor is not eligible for the exemption provided
22 by Section 151.318 on items used in the performance of a contract to
23 improve real property.

24 SECTION 19. Section 151.313(a), Tax Code, is amended to
25 read as follows:

26 (a) The following items are exempted from the taxes imposed
27 by this chapter:

1 (1) a drug or medicine, other than insulin, if
2 prescribed or dispensed for a human or animal by a licensed
3 practitioner of the healing arts;

4 (2) insulin;

5 (3) subject to Subsection (c), a drug or medicine,
6 without regard to whether it is prescribed or dispensed by a
7 licensed practitioner of the healing arts;

8 (4) a hypodermic syringe or needle;

9 (5) a brace; hearing aid or audio loop; orthopedic,
10 dental, or prosthetic device; ileostomy, colostomy, or ileal
11 bladder appliance; or supplies or replacement parts for the listed
12 items;

13 (6) a therapeutic appliance, device, and any related
14 supplies specifically designed for those products, if dispensed or
15 prescribed by a licensed practitioner of the healing arts, when
16 those items are purchased and used by an individual for whom the
17 items listed in this subdivision were dispensed or prescribed;

18 (7) corrective lens and necessary and related
19 supplies, if dispensed or prescribed by an ophthalmologist or
20 optometrist;

21 (8) specialized printing or signalling equipment used
22 by the deaf for the purpose of enabling the deaf to communicate
23 through the use of an ordinary telephone and all materials, paper,
24 and printing ribbons used in that equipment;

25 (9) a braille wristwatch, braille writer, braille
26 paper and braille electronic equipment that connects to computer
27 equipment, and the necessary adaptive devices and adaptive computer

1 software;

2 (10) each of the following items if purchased for use
3 by the blind to enable them to function more independently: a slate
4 and stylus, print enlarger, light probe, magnifier, white cane,
5 talking clock, large print terminal, talking terminal, or harness
6 for guide dog;

7 (11) hospital beds;

8 (12) blood glucose monitoring test strips;

9 (13) an adjustable eating utensil used to facilitate
10 independent eating if purchased for use by a person, including a
11 person who is elderly or physically disabled, has had a stroke, or
12 is a burn victim, who does not have full use or control of the
13 person's hands or arms; ~~and~~

14 (14) subject to Subsection (d), a dietary supplement;
15 and

16 (15) intravenous systems, supplies, and replacement
17 parts used in the treatment of humans.

18 SECTION 20. Section 151.314(e), Tax Code, is amended to
19 read as follows:

20 (e) Food products, candy, carbonated beverages, and diluted
21 juices are exempted from the taxes imposed by this chapter if sold
22 at an exempt sale qualifying under this subsection or if stored or
23 used by the purchaser of the item at the exempt sale. A sale is
24 exempted under this subsection if:

25 (1) the sale is made by a ~~[person under 19 years old~~
26 ~~who is a]~~ member of or volunteer for a nonprofit organization
27 devoted to the exclusive purpose of education or religious or

1 physical training or by a group associated with a public or private
2 elementary or secondary school;

3 (2) the sale is made as a part of a fund-raising drive
4 sponsored by the organization or group; and

5 (3) all net proceeds from the sale go to the
6 organization or group for its exclusive use.

7 SECTION 21. Section 151.319(f), Tax Code, is amended to
8 read as follows:

9 (f) In this section, "newspaper" means a publication that is
10 printed on newsprint, the average sales price of which for each copy
11 over a 30-day period does not exceed \$1.50 [~~75 cents~~], and that is
12 printed and distributed at a daily, weekly, or other short interval
13 for the dissemination of news of a general character and of a
14 general interest. "Newspaper" does not include a magazine,
15 handbill, circular, flyer, sales catalog, or similar printed item
16 unless the printed item is printed for distribution as a part of a
17 newspaper and is actually distributed as a part of a newspaper. For
18 the purposes of this section, an advertisement is news of a general
19 character and of a general interest. Notwithstanding any other
20 provision of this subsection, "newspaper" includes:

21 (1) a publication containing articles and essays of
22 general interest by various writers and advertisements that is
23 produced for the operator of a licensed and certified carrier of
24 persons and distributed by the operator to its customers during
25 their travel on the carrier; and

26 (2) a publication for the dissemination of news of a
27 general character and of a general interest that is printed on

1 newsprint and distributed to the general public free of charge at a
2 daily, weekly, or other short interval.

3 SECTION 22. Section 151.323, Tax Code, is amended to read as
4 follows:

5 Sec. 151.323. CERTAIN TELECOMMUNICATIONS SERVICES. (a)
6 There are exempted from the taxes imposed by this chapter the
7 receipts from the sale, use, or other consumption in this state of:

8 (1) long-distance telecommunications services that
9 are not both originated from and billed to a telephone number or
10 billing or service address within Texas;

11 (2) access to a local exchange telephone company's
12 network by a regulated provider of telecommunications services; and

13 (3) broadcasts, other than cable television service,
14 by commercial radio or television stations licensed or regulated by
15 the Federal Communications Commission.

16 (b) The exemption provided by this section does not apply to
17 mobile telecommunications services.

18 SECTION 23. Subchapter H, Chapter 151, Tax Code, is amended
19 by adding Section 151.3501 to read as follows:

20 Sec. 151.3501. LABOR TO RESTORE, REPAIR, OR REMODEL
21 HISTORIC SITES. (a) Labor to restore, repair, or remodel an
22 improvement to real property is exempted from the taxes imposed by
23 this chapter if:

24 (1) the amount of the charge for labor is separately
25 itemized; and

26 (2) the restoration, repair, or remodeling is
27 performed on an improvement to real property listed in the National

1 Register of Historic Places.

2 (b) The exemption provided by this section does not apply to
3 tangible personal property transferred by the service provider to
4 the purchaser as part of the service.

5 SECTION 24. Section 151.355, Tax Code, as amended by
6 Chapters 966 and 1234, Acts of the 77th Legislature, Regular
7 Session, 2001, is reenacted and amended to read as follows:

8 Sec. 151.355. WATER-RELATED EXEMPTIONS. The following are
9 exempted from taxes imposed by this chapter:

10 (1) rainwater harvesting equipment or supplies, water
11 recycling and reuse equipment or supplies, or other equipment,
12 services, or supplies used solely to reduce or eliminate water use;

13 (2) equipment, services, or supplies used solely for
14 desalination of surface water or groundwater;

15 (3) equipment, services, or supplies used solely for
16 brush control designed to enhance the availability of water;

17 (4) equipment, services, or supplies used solely for
18 precipitation enhancement;

19 (5) equipment, services, or supplies used solely to
20 construct or operate a water or wastewater system certified by the
21 Texas Commission on Environmental Quality [~~Natural Resource~~
22 ~~Conservation Commission~~] as a regional system; and

23 (6) equipment, services, or supplies used solely to
24 construct or operate a water supply or wastewater system by a
25 private entity as a public-private partnership as certified by the
26 political subdivision that is a party to the project.

27 SECTION 25. Section 152.086(a), Tax Code, is amended to

1 read as follows:

2 (a) The taxes imposed by this chapter do not apply to the
3 sale or use of a motor vehicle that:

4 (1) has been or will be modified before the second
5 anniversary of the date of purchase for operation by, or for the
6 transportation of, an orthopedically handicapped person; and

7 (2) is driven by or used for the transportation of an
8 orthopedically handicapped person.

9 SECTION 26. Subchapter F, Chapter 152, Tax Code, is amended
10 by adding Section 152.106 to read as follows:

11 Sec. 152.106. PROHIBITED ADVERTISING; CRIMINAL PENALTY.

12 (a) A person who is required by Chapter 503, Transportation Code,
13 to hold a dealer's general distinguishing number commits an offense
14 if the person directly or indirectly advertises, holds out, or
15 states to a customer or to the public that the person:

16 (1) will assume, absorb, or refund a part of the tax
17 imposed by this chapter; or

18 (2) will not add the tax imposed by this chapter to the
19 sales price of the motor vehicle sold, leased, or rented.

20 (b) An offense under this section is a Class C misdemeanor.

21 SECTION 27. Section 153.013(a), Tax Code, is amended to
22 read as follows:

23 (a) A distributor, supplier, dealer, interstate trucker,
24 jobber, dyed diesel fuel bonded user, [~~or~~] agricultural bonded
25 user, or other user who fails to keep a record, issue an invoice, or
26 file a report required by this chapter, is presumed to have sold or
27 used for taxable purposes all motor fuel shown by an audit by the

1 comptroller to have been sold to the distributor, supplier, dealer,
 2 interstate trucker, jobber, dyed diesel fuel bonded user, [~~or~~]
 3 agricultural bonded user, or other user. Motor fuel unaccounted
 4 for is presumed to have been sold or used for taxable purposes. The
 5 comptroller may fix or establish the amount of taxes, penalties,
 6 and interest due the state from the records of deliveries or from
 7 any records or information available to him. If a tax claim, as
 8 developed from this procedure, is not paid, after the opportunity
 9 to request a redetermination, the claim and any audit made by the
 10 comptroller or any report filed by the distributor, supplier,
 11 dealer, interstate trucker, jobber, dyed diesel fuel bonded user,
 12 [~~or~~] agricultural bonded user, or other user, are evidence in any
 13 suit or judicial proceedings filed by the attorney general, and are
 14 prima facie evidence of the correctness of the claim or audit. A
 15 prima facie presumption of the correctness of the claim may be
 16 overcome at the trial by evidence adduced by the distributor,
 17 supplier, dealer, interstate trucker, jobber, dyed diesel fuel
 18 bonded user, [~~or~~] agricultural bonded user, or other user.

19 SECTION 28. Section 153.117, Tax Code, is amended by adding
 20 Subsection (i) to read as follows:

21 (i) A bulk user who files a claim for refund shall keep:

22 (1) a record showing the number of gallons of:

23 (A) all gasoline purchased or received, showing
 24 the name of the seller and date of purchase;

25 (B) all gasoline deliveries into the fuel supply
 26 tanks of motor vehicles;

27 (C) gasoline used for other purposes, showing the

1 purpose for which used; and

2 (D) all gasoline lost by fire, theft, or
3 accident; and

4 (2) a distribution log if used by a bulk user for
5 documentation to support a refund claim.

6 SECTION 29. Section 153.120, Tax Code, is amended by adding
7 Subsection (d) to read as follows:

8 (d) A distribution log filed with the comptroller to support
9 the number of gallons of gasoline removed from a bulk user's own
10 bulk storage must contain the name and address of the bulk user
11 making the delivery stamped or preprinted on it and for each
12 individual delivery from the bulk storage:

13 (1) the date of delivery;

14 (2) the number of gallons of gasoline delivered;

15 (3) the signature of the bulk user; and

16 (4) the type or description of off-highway equipment
17 into which the gasoline was delivered, or the type of licensed motor
18 vehicle into which the gasoline was delivered, including the state
19 highway license plate number or vehicle identification number, and
20 the odometer or hubmeter reading.

21 SECTION 30. Section 153.205, Tax Code, as amended by
22 Chapters 1263 and 1444, Acts of the 77th Legislature, Regular
23 Session, 2001, is reenacted and amended to read as follows:

24 Sec. 153.205. STATEMENT FOR PURCHASE OF DIESEL FUEL TAX
25 FREE. (a) The first sale or use of diesel fuel in this state is
26 taxable, except that sales of dyed diesel fuel, or of undyed diesel
27 fuel if the fuel will be used for an agricultural nonhighway

1 purpose, may be made without collecting the tax if the purchaser
2 furnishes to a permitted supplier a signed statement, including an
3 end user number or agricultural exemption number issued by the
4 comptroller. A person who wants to use a signed statement to
5 purchase dyed diesel fuel must apply to the comptroller for an end
6 user number to be used in conjunction with a signed statement. A
7 person who wants to use a signed statement to purchase dyed or
8 undyed diesel fuel for an agricultural nonhighway purpose must
9 apply to the comptroller for an agricultural exemption number to be
10 used in conjunction with a signed statement. A supplier may not make
11 a tax-free sale of any diesel fuel to a purchaser using a signed
12 statement unless the purchaser has an end user number or
13 agricultural exemption number issued by the comptroller under this
14 section.

15 (b) A sale of dyed diesel fuel may be made without
16 collecting the tax if the purchaser furnishes to a permitted
17 supplier a signed statement, including an end user number issued by
18 the comptroller, that stipulates that:

19 (1) all [~~none~~] of the diesel fuel purchased on the
20 signed statement will be dyed diesel fuel [~~is of a type that may~~
21 ~~legally be used on the public highway~~];

22 (2) all of the dyed diesel fuel purchased on the signed
23 statement will be consumed by the purchaser [~~, or all of the diesel~~
24 ~~fuel will be consumed by the purchaser in oil or gas production, as~~
25 ~~applicable,~~] and will not be resold; and

26 (3) none of the dyed diesel fuel purchased on the
27 signed statement will be delivered or permitted to be delivered

1 into the fuel supply tank of a motor vehicle operated on the public
2 highways of this state.

3 (c) A sale of dyed or undyed diesel fuel for an agricultural
4 nonhighway use may be made without collecting the tax if the
5 purchaser furnishes to a permitted supplier a signed statement,
6 including an agricultural exemption number issued by the
7 comptroller, that stipulates that:

8 (1) all of the dyed and undyed diesel fuel purchased on
9 the signed statement will be used exclusively in agricultural
10 nonhighway equipment;

11 (2) all of the dyed and undyed diesel fuel purchased on
12 the signed statement will be consumed by the purchaser and will not
13 be resold; and

14 (3) none of the dyed or undyed diesel fuel purchased on
15 the signed statement will be delivered or permitted to be delivered
16 into the fuel supply tank of a motor vehicle operated on the public
17 highways of this state.

18 (d) A person may not make a tax-free purchase and a
19 permitted supplier may not make a tax-free sale to a purchaser of
20 any diesel fuel under this section using a signed statement:

21 (1) for the purchase or the sale of more than 7,400
22 gallons of dyed or undyed diesel fuel in a single [~~transaction or~~]
23 delivery; or

24 (2) in a calendar month in which the person has
25 previously purchased from all sources or in which the permitted
26 supplier has previously sold to that purchaser more than:

27 (A) 10,000 gallons of dyed diesel fuel [~~from all~~

1 sources];

2 (B) 25,000 gallons of dyed diesel fuel [~~from all~~
3 ~~sources~~] if the purchaser stipulates in the signed statement that
4 all of the fuel will be consumed by the purchaser in the original
5 production of, or to increase the production of, oil or gas and
6 furnishes the supplier with a letter of exception issued by the
7 comptroller [~~production~~]; or

8 (C) 25,000 gallons of dyed or undyed diesel fuel
9 [~~from all sources~~] if purchased for agricultural purposes by a
10 person who furnishes to the permitted supplier, in conjunction with
11 the signed statement, an agricultural exemption number issued by
12 the comptroller.

13 (e) Any gallons purchased or sold in excess of the
14 limitations prescribed by Subsection (d) constitute a taxable
15 purchase or sale. The purchaser paying the tax on dyed or undyed
16 diesel fuel in excess of the limitations prescribed by Subsection
17 (d) may claim a refund of the tax paid on any dyed or undyed diesel
18 fuel used for nonhighway purposes under Section 153.222.

19 (f) [~~A supplier may not make a tax-free sale of any diesel~~
20 ~~fuel under this section to a purchaser using a signed statement:~~

21 [~~(1) for the sale of more than 7,400 gallons of dyed or~~
22 ~~undyed diesel fuel in a single transaction or delivery, or~~

23 [~~(2) in a calendar month in which the supplier has~~
24 ~~previously sold more than:~~

25 [~~(A) 10,000 gallons of dyed diesel fuel to the~~
26 ~~purchaser,~~

27 [~~(B) 25,000 gallons of dyed diesel fuel to the~~

1 ~~purchaser if the purchaser stipulates in the signed statement that~~
2 ~~all of the fuel will be consumed by the purchaser in oil or gas~~
3 ~~production; or~~

4 ~~[(C) 25,000 gallons of dyed or undyed diesel fuel~~
5 ~~to the purchaser if the purchaser furnishes to the permitted~~
6 ~~supplier, in conjunction with the signed statement, an agricultural~~
7 ~~exemption number issued by the comptroller.~~

8 ~~[(g) Any gallons sold in excess of the limitations~~
9 ~~prescribed by Subsection (f) constitute a taxable sale. The~~
10 ~~purchaser paying the tax on dyed or undyed diesel fuel in excess of~~
11 ~~the limitations prescribed by Subsection (f) may claim a refund of~~
12 ~~the tax paid on any dyed or undyed diesel fuel used for nonhighway~~
13 ~~purposes under Section 153.222.~~

14 ~~[(h)]~~ The signed statement and end user number or
15 agricultural exemption number from the purchaser as provided by
16 this section relieves the permitted supplier from the burden of
17 proof that the sale of dyed diesel fuel or of undyed diesel fuel for
18 an agricultural nonhighway purpose was not taxable to the purchaser
19 and remains in effect unless:

20 (1) the statement is revoked in writing by the
21 purchaser or supplier; ~~or~~

22 (2) the comptroller notifies the supplier in writing
23 that the purchaser may no longer make tax-free purchases; or

24 (3) the supplier is put on notice by making taxable
25 sales of dyed diesel fuel to a purchaser who has previously
26 furnished a signed statement to the supplier.

27 (g) For purposes of Subsection (f)(3), the supplier is not

1 put on notice when taxable sales of dyed diesel fuel are made in
2 accordance with Subsection (e).

3 (h) The statement must be signed by the purchaser or the
4 purchaser's representative.

5 (i) The comptroller by rule may allow separate operating
6 divisions of a corporation to give separate signed statements as if
7 the divisions were different legal entities.

8 (j) The comptroller may adopt necessary forms and rules to
9 administer and enforce this section.

10 (k) [~~(i)~~] A taxable use of any part of the dyed or undyed
11 diesel fuel purchased under a signed statement shall, in addition
12 to any criminal penalty, forfeit the right of the person to purchase
13 dyed or undyed diesel fuel tax free for a period of one year from the
14 date of the offense, and any tax, interest, and penalty found to be
15 due through false or erroneous execution or continuance of a
16 promissory statement by the purchaser, if assessed to the supplier,
17 is a debt of the purchaser to the supplier until paid, and is
18 recoverable at law in the same manner as the purchase price of the
19 fuel. The person may, however, claim a refund of the tax paid on any
20 dyed or undyed diesel fuel used for nonhighway purposes under
21 Section 153.222.

22 SECTION 31. Section 153.208(d), Tax Code, is amended to
23 read as follows:

24 (d) A supplier may not make a tax-free sale or delivery of
25 diesel fuel into the fuel supply tanks of a motor vehicle other than
26 a motor vehicle:

27 (1) owned by the United States;

1 (2) exclusively operated by a public school district
2 in this state; or

3 (3) operated by a commercial transportation company
4 that provides public school transportation services to a school
5 district in this state under Section 34.008, Education Code, and
6 that is used by the company exclusively to provide those services.

7 SECTION 32. Section 153.219(c), Tax Code, is amended to
8 read as follows:

9 (c) A dyed diesel fuel bonded user, an agricultural bonded
10 user, or other user [~~with nonhighway equipment uses~~] who files a
11 claim for a refund shall keep:

12 (1) a record showing the number of gallons of:

13 (A) [~~(1)~~] inventories of all diesel fuel on hand
14 at the first of each month;

15 (B) [~~(2)~~] all diesel fuel purchased or
16 received, showing the name of the seller and the date of each
17 purchase;

18 (C) [~~(3)~~] all diesel fuel deliveries into the
19 fuel supply tanks of motor vehicles;

20 (D) [~~(4)~~] diesel fuel used for other purposes,
21 showing the purpose for which used; and

22 (E) [~~(5)~~] all diesel fuel lost by fire, theft,
23 or accident; and

24 (2) a distribution log if used by a bulk user for
25 documentation to support a refund claim.

26 SECTION 33. Section 153.222(a), Tax Code, is amended to
27 read as follows:

1 (a) A dealer or diesel fuel jobber who has paid tax on diesel
2 fuel that has been used or sold for use by the dealer or diesel fuel
3 jobber for any purpose except in a motor vehicle operated or
4 intended to be operated [~~other than propelling a motor vehicle~~] on
5 the public highways [~~of this state~~] or that has been sold to the
6 United States or a public school district in this state for the
7 exclusive use of the purchaser, or to a commercial transportation
8 company for exclusive use in providing public school transportation
9 services to a school district under Section 34.008, Education Code,
10 without adding the amount of the tax to his selling price, and a
11 user who has paid tax on any diesel fuel that has been used by him
12 for any [~~a~~] purpose except in a motor vehicle operated or intended
13 to be operated [~~other than propelling a motor vehicle~~] on the public
14 highways, is a public school district and has paid the tax on diesel
15 fuel purchased for its exclusive use, is a commercial
16 transportation company and has paid the tax on diesel fuel used by
17 the company exclusively to provide public school transportation
18 services to a school district under Section 34.008, Education Code,
19 or is a person who has paid tax on diesel fuel used in a commercial
20 motor vehicle as provided by Section 153.203(a)(10) [~~153.203(10)~~]
21 may file a claim for a refund of taxes paid, less the deduction
22 allowed vendors.

23 SECTION 34. Section 153.223, Tax Code, is amended by adding
24 Subsection (d) to read as follows:

25 (d) A distribution log filed with the comptroller to support
26 the number of gallons of diesel fuel removed from a bulk user's own
27 bulk storage must contain the name and address of the bulk user

1 making the delivery stamped or preprinted on it and for each
2 individual delivery from the bulk storage:

- 3 (1) the date of delivery;
4 (2) the number of gallons of diesel fuel delivered;
5 (3) the signature of the bulk user; and
6 (4) the type or description of off-highway equipment
7 into which the diesel fuel was delivered, or the type of licensed
8 motor vehicle into which the diesel fuel was delivered, including
9 the state highway license plate number or vehicle identification
10 number, and the odometer or hubmeter reading.

11 SECTION 35. Section 153.403, Tax Code, is amended to read as
12 follows:

13 Sec. 153.403. CRIMINAL OFFENSES. Except as provided by
14 Section 153.404, a person commits an offense if the person:

15 (1) refuses to stop and permit the inspection and
16 examination of a motor vehicle transporting or using motor fuel on
17 the demand of a peace officer or the comptroller;

18 (2) is required to hold a valid trip permit or
19 interstate trucker's permit, but operates a motor vehicle in this
20 state without a valid trip permit or interstate trucker's permit;

21 (3) operates a liquefied gas-propelled motor vehicle
22 that is required to be licensed in Texas, including a motor vehicle
23 equipped with dual carburetion, and does not display a current
24 liquefied gas tax decal or multistate fuels tax agreement decal;

25 (4) transports gasoline or diesel fuel in any cargo
26 tank that has a connection by pipe, tube, valve, or otherwise with
27 the fuel injector or carburetor or with the fuel supply tank feeding

1 the fuel injector or carburetor of the motor vehicle transporting
2 the product;

3 (5) sells or delivers gasoline or diesel fuel from a
4 fuel supply tank that is connected with the fuel injector or
5 carburetor of a motor vehicle;

6 (6) owns or operates a motor vehicle for which reports
7 or mileage records are required by this chapter without an
8 operating odometer or other device in good working condition to
9 record accurately the miles traveled;

10 (7) as a diesel tax prepaid user fails to prepay the
11 tax on every diesel-powered motor vehicle owned or operated by him;

12 (8) uses dyed diesel fuel [~~on which a tax is required~~
13 ~~to be paid,~~] for the operation of a motor vehicle on a public
14 highway, unless that use is permitted by another provision of this
15 chapter;

16 (9) makes a tax-free sale or delivery of liquefied gas
17 into the fuel supply tank of a motor vehicle that does not display a
18 current Texas liquefied gas tax decal;

19 (10) makes a sale or delivery of liquefied gas on which
20 the person knows the tax is required to be collected, if at the time
21 the sale is made the person does not hold a valid dealer's permit;

22 (11) makes a tax-free sale or delivery of liquefied
23 gas into the fuel supply tank of a motor vehicle bearing
24 out-of-state license plates;

25 (12) makes a delivery of liquefied gas into the fuel
26 supply tank of a motor vehicle bearing Texas license plates and no
27 Texas liquefied gas tax decal, unless licensed under a multistate

1 fuels tax agreement;

2 (13) refuses to permit the comptroller or the attorney
3 general to inspect, examine, or audit a book or record required to
4 be kept by a distributor, supplier, dyed diesel fuel bonded user,
5 agricultural bonded user, dealer, interstate trucker, aviation
6 fuel dealer, jobber, common or contract carrier, or any person
7 required to hold a permit under this chapter;

8 (14) refuses to permit the comptroller or the attorney
9 general to inspect or examine any plant, equipment, materials, or
10 premises where motor fuel is produced, processed, stored, sold,
11 delivered, or used;

12 (15) refuses to permit the comptroller, the attorney
13 general, an employee of either of those officials, a peace officer,
14 an employee of the Texas Commission on Environmental Quality
15 [~~Natural Resource Conservation Commission~~], or an employee of the
16 Department of Agriculture to measure or gauge the contents of or
17 take samples from a storage tank or container on premises where
18 motor fuel is produced, processed, stored, sold, delivered, or
19 used;

20 (16) is a distributor, dyed diesel fuel bonded user,
21 agricultural bonded user, interstate trucker, or supplier and fails
22 or refuses to make or deliver to the comptroller a report required
23 by this chapter to be made and delivered to the comptroller;

24 (17) is an importer who does not obtain an import
25 verification number when required by this chapter;

26 (18) purchases motor fuel for export, on which the tax
27 imposed by this chapter has not been paid, and subsequently diverts

1 or causes the motor fuel to be diverted to a destination in this
2 state or any other state or country other than the originally
3 designated state or country without first obtaining a diversion
4 number;

5 (19) conceals motor fuel with the intent of engaging
6 in any conduct proscribed by this chapter or refuses to make sales
7 of motor fuel on the volume-corrected basis prescribed by this
8 chapter;

9 (20) refuses, while transporting motor fuel, to stop
10 the motor vehicle he is operating when called on to do so by a person
11 authorized to stop the motor vehicle;

12 (21) refuses to surrender a motor vehicle and cargo
13 for impoundment after being ordered to do so by a person authorized
14 to impound the motor vehicle and cargo;

15 (22) mutilates, destroys, or secretes a book or record
16 required by this chapter to be kept by a distributor, supplier, dyed
17 diesel fuel bonded user, agricultural bonded user, dealer,
18 interstate trucker, aviation fuel dealer, jobber, or person
19 required to hold a permit under this chapter;

20 (23) is a distributor, supplier, dyed diesel fuel
21 bonded user, agricultural bonded user, dealer, interstate trucker,
22 aviation fuel dealer, jobber, or other person required to hold a
23 permit under this chapter, or the agent or employee of one of those
24 persons and makes a false entry or fails to make an entry in the
25 books and records required under this chapter to be made by the
26 person or fails to retain a document as required by this chapter;

27 (24) transports in any manner motor fuel under a false

1 cargo manifest or shipping document, or transports in any manner
2 motor fuel to a location without delivering at the same time a
3 shipping document relating to that shipment;

4 (25) engages in a motor fuel transaction that requires
5 that the person have a permit under this chapter without then and
6 there holding the required permit;

7 (26) makes and delivers to the comptroller a report
8 required under this chapter to be made and delivered to the
9 comptroller, if the report contains false information;

10 (27) forges, falsifies, or alters an invoice
11 prescribed by law;

12 (28) makes any statement, knowing said statement to be
13 false, in a claim for a tax refund filed with the comptroller;

14 (29) furnishes to a supplier a signed statement for
15 purchasing diesel fuel tax free and then uses the tax-free diesel
16 fuel to operate a diesel-powered motor vehicle on a public highway;

17 (30) holds an aviation fuel dealer's permit and makes a
18 taxable sale or use of any gasoline or diesel fuel;

19 (31) fails to remit any tax funds collected by a
20 distributor, supplier, dyed diesel fuel bonded user, agricultural
21 bonded user, dealer, interstate trucker, jobber, or any other
22 person required to hold a permit under this chapter;

23 (32) makes a sale of diesel fuel tax free into a
24 storage facility of a person who:

25 (A) is not permitted as a supplier, as an
26 aviation fuel dealer, as a dyed diesel fuel bonded user, as an
27 agricultural bonded user, or as a diesel tax prepaid user of diesel

1 fuel; or

2 (B) does not furnish to the permitted supplier a
3 signed statement prescribed in Section 153.205;

4 (33) makes a sale of gasoline tax free to any person
5 who is not permitted as either a distributor or an aviation fuel
6 dealer;

7 (34) is a dealer who purchases any motor fuel tax free
8 when not authorized to make a tax-free purchase under this chapter;

9 (35) is a dealer who purchases motor fuel with the
10 intent to evade any tax imposed by this chapter, or who accepts a
11 delivery of motor fuel by any means and does not at the same time
12 accept or receive a shipping document relating to the delivery;

13 (36) transports motor fuel for which a cargo manifest
14 or shipping document is required to be carried without possessing
15 or exhibiting on demand by an officer authorized to make the demand
16 a cargo manifest or shipping document containing the information
17 required to be shown on the manifest or shipping document;

18 (37) imports, sells, uses, distributes, or stores
19 motor fuel within this state on which the taxes imposed by this
20 chapter are owed but have not been first paid to or reported by the
21 holder of a distributor, supplier, liquefied gas dealer, interstate
22 trucker, diesel tax prepaid user, dyed diesel fuel bonded user, or
23 agricultural bonded user permit;

24 (38) blends products together to produce a blended
25 fuel that is offered for sale, sold, or used that expands the volume
26 of the original product to evade paying applicable motor fuel
27 taxes; or

1 (39) evades or attempts to evade in any manner a tax
2 imposed on motor fuel by this chapter.

3 SECTION 36. Section 156.051(a), Tax Code, is amended to
4 read as follows:

5 (a) A tax is imposed on a person who, under a lease,
6 concession, permit, right of access, license, contract, or
7 agreement, pays for the use or possession or for the right to the
8 use or possession of a room or space in a hotel costing \$15 [~~\$2~~] or
9 more each day.

10 SECTION 37. Section 156.102(b), Tax Code, is amended to
11 read as follows:

12 (b) For purposes of this section:

13 (1) a corporation or association that is organized and
14 operated exclusively for the cleaning of beaches and that has no
15 part of its net earnings inure to the benefit of a private
16 shareholder or individual is organized and operated exclusively for
17 a charitable purpose; and

18 (2) a public or private institution of higher
19 education is organized and operated exclusively for an educational
20 purpose only if the institution is defined as a Texas [~~an~~]
21 institution of higher education or as a Texas private or
22 independent institution of higher education under any subdivision
23 of Section 61.003, Education Code.

24 SECTION 38. Subchapter C, Chapter 156, Tax Code, is amended
25 by adding Section 156.104 to read as follows:

26 Sec. 156.104. EXEMPTION CERTIFICATE. (a) The right to use
27 or possess a room or space in a hotel is exempt from taxation under

1 this chapter if the person required to collect the tax receives, in
2 good faith from a guest, a properly completed exemption certificate
3 stating that the guest is qualified for an exemption under Section
4 156.102 or 156.103. An exemption certificate must be supported by
5 the documentation required under rules adopted by the comptroller.

6 (b) The comptroller shall produce and maintain a list of
7 entities that have been provided a letter of exemption from the
8 state hotel occupancy tax under Section 156.102. The comptroller
9 shall make the list available on the comptroller's Internet
10 website.

11 SECTION 39. Section 171.001(a), Tax Code, is amended to
12 read as follows:

13 (a) A franchise tax is imposed on:

14 (1) each corporation that does business in this state
15 or that is chartered [~~or authorized to do business~~] in this state;
16 [~~7~~] and

17 (2) each limited liability company that does business
18 in this state or that is organized under the laws of this state [~~or~~
19 ~~is authorized to do business in this state~~].

20 SECTION 40. Section 171.001(b)(2), Tax Code, is amended to
21 read as follows:

22 (2) "Beginning date" means:

23 (A) for a corporation chartered in this state,
24 the date on which the corporation's charter takes effect; and

25 (B) for a foreign corporation, [~~the earlier of~~]
26 the date on which[~~+~~

27 [~~(i) the corporation's certificate of~~

1 ~~authority takes effect, or~~

2 [~~(ii)~~] the corporation begins doing business
3 in this state.

4 SECTION 41. Section 171.052, Tax Code, is amended to read as
5 follows:

6 Sec. 171.052. CERTAIN CORPORATIONS. An insurance
7 organization, title insurance company, or title insurance agent
8 authorized to engage in insurance business in this state now
9 required to pay an annual tax under Chapter 4 or 9, Insurance Code,
10 measured by its gross premium receipts is exempted from the
11 franchise tax. A [~~An insurance organization performing management~~
12 ~~or accounting activities in this state on behalf of a~~] nonadmitted
13 [~~captive~~] insurance organization [~~company under Chapter 101,~~
14 ~~Insurance Code,~~] that is required to pay a gross premium receipts
15 tax during a tax year is exempted from the franchise tax for that
16 same tax year. Farm mutuals, local mutual aid associations, and
17 burial associations are not subject to the franchise tax.

18 SECTION 42. Section 171.084(c), Tax Code, is amended to
19 read as follows:

20 (c) In this section, "wholesale center" means a permanent
21 wholesale facility that has permanent tenants and that promotes at
22 least four national or regional trade shows in a calendar year. A
23 tenant leasing space at a wholesale center for a period longer than
24 the period prescribed by Subsection (b) may qualify for the
25 exemption provided by this section only if the tenant solicits
26 orders on an occasional basis at the trade show as prescribed by
27 Subsection (b).

1 SECTION 43. Section 171.1032(b), Tax Code, is amended to
2 read as follows:

3 (b) A corporation shall deduct from its gross receipts
4 computed under Subsection (a) any amount to the extent included
5 under Subsection (a) because of the application of Section 78 or
6 Sections 951-964, Internal Revenue Code, any amount excludable
7 under Section 171.110(k), and dividends received from a subsidiary,
8 associate, or affiliated corporation that does not transact a
9 substantial portion of its business or regularly maintain a
10 substantial portion of its assets in the United States.

11 SECTION 44. Section 171.1051(c), Tax Code, is amended to
12 read as follows:

13 (c) A corporation shall deduct from its gross receipts
14 computed under Subsection (a) any amount to the extent included in
15 Subsection (a) because of the application of Section 78 or Sections
16 951-964, Internal Revenue Code, any amount excludable under Section
17 171.110(k), and dividends received from a subsidiary, associate, or
18 affiliated corporation that does not transact a substantial portion
19 of its business or regularly maintain a substantial portion of its
20 assets in the United States.

21 SECTION 45. Section 171.106, Tax Code, is amended by adding
22 Subsection (i) to read as follows:

23 (i) Receipts from services that a defense readjustment
24 project performs in a defense economic readjustment zone are not
25 receipts from business done in this state.

26 SECTION 46. Section 171.109, Tax Code, is amended by adding
27 Subsection (a-1) to read as follows:

1 (a-1) A legally enforceable obligation that requires the
2 return of a like-kind property that was borrowed will be considered
3 debt if it is a liability according to generally accepted
4 accounting principles and if the return must be made within an
5 ascertainable period of time or on demand. The amount that will be
6 considered debt is the fair market value measured on the last day on
7 which the report is based as required by Section 171.153. For
8 purposes of this subsection, "like-kind property" means the same
9 quantity, quality, and nature or character as the property
10 borrowed.

11 SECTION 47. Section 171.110, Tax Code, is amended by
12 amending Subsection (a) and adding Subsections (k) and (l) to read
13 as follows:

14 (a) The net taxable earned surplus of a corporation is
15 computed by:

16 (1) determining the corporation's reportable federal
17 taxable income, subtracting from that amount any amount excludable
18 under Subsection (k), any amount included in reportable federal
19 taxable income under Section 78 or Sections 951-964, Internal
20 Revenue Code, and dividends received from a subsidiary, associate,
21 or affiliated corporation that does not transact a substantial
22 portion of its business or regularly maintain a substantial portion
23 of its assets in the United States, and adding to that amount any
24 compensation of officers or directors, or if a bank, any
25 compensation of directors and executive officers, to the extent
26 excluded in determining federal taxable income to determine the
27 corporation's taxable earned surplus;

1 (2) apportioning the corporation's taxable earned
2 surplus to this state as provided by Section 171.106(b) or (c), as
3 applicable, to determine the corporation's apportioned taxable
4 earned surplus;

5 (3) adding the corporation's taxable earned surplus
6 allocated to this state as provided by Section 171.1061; and

7 (4) subtracting from that amount any allowable
8 deductions and any business loss that is carried forward to the tax
9 reporting period and deductible under Subsection (e).

10 (k) Dividends and interest received from federal
11 obligations are not included in earned surplus or gross receipts
12 for earned surplus purposes.

13 (1) In this section:

14 (1) "Federal obligations" means:

15 (A) stocks and other direct obligations of, and
16 obligations unconditionally guaranteed by, the United States
17 government and United States government agencies; and

18 (B) direct obligations of a United States
19 government-sponsored agency.

20 (2) "Obligation" means any bond, debenture, security,
21 mortgage-backed security, pass-through certificate, or other
22 evidence of indebtedness of the issuing entity. The term does not
23 include a deposit, a repurchase agreement, a loan, a lease, a
24 participation in a loan or pool of loans, a loan collateralized by
25 an obligation of a United States government agency, or a loan
26 guaranteed by a United States government agency.

27 (3) "United States government" means any department or

1 ministry of the federal government, including a federal reserve
2 bank. The term does not include a state or local government, a
3 commercial enterprise owned wholly or partly by the United States
4 government, or a local governmental entity or commercial enterprise
5 whose obligations are guaranteed by the United States government.

6 (4) "United States government agency" means an
7 instrumentality of the United States government whose obligations
8 are fully and explicitly guaranteed as to the timely payment of
9 principal and interest by the full faith and credit of the United
10 States government. The term includes the Government National
11 Mortgage Association, the Department of Veterans Affairs, the
12 Federal Housing Administration, the Farmers Home Administration,
13 the Export-Import Bank, the Overseas Private Investment
14 Corporation, the Commodity Credit Corporation, the Small Business
15 Administration, and any successor agency.

16 (5) "United States government-sponsored agency" means
17 an agency originally established or chartered by the United States
18 government to serve public purposes specified by the United States
19 Congress but whose obligations are not explicitly guaranteed by the
20 full faith and credit of the United States government. The term
21 includes the Federal Home Loan Mortgage Corporation, the Federal
22 National Mortgage Association, the Farm Credit System, the Federal
23 Home Loan Bank System, the Student Loan Marketing Association, and
24 any successor agency.

25 SECTION 48. Sections 171.110(b) and (c), Tax Code, are
26 amended to read as follows:

27 (b) Except as provided by Subsection (c), a [A] corporation

1 is not required to add the compensation of officers or directors as
2 required by Subsection (a)(1) if the corporation is:

3 (1) a corporation that has not more than 35
4 shareholders; or

5 (2) an S corporation, as that term is defined by
6 Section 1361, Internal Revenue Code.

7 (c) A subsidiary corporation may not claim the exclusion
8 under Subsection (b) if it has a parent corporation that does not
9 qualify for the exclusion. For purposes of this subsection, a
10 corporation qualifies as a parent if it ultimately controls the
11 subsidiary, even if the control arises through a series or group of
12 other subsidiaries or entities. Control is presumed if a parent
13 corporation directly or indirectly owns, controls, or holds a
14 majority of the outstanding voting stock of a corporation or
15 ownership interests in another entity [~~Subsection (b) does not~~
16 ~~apply to a subsidiary corporation unless it applies to the~~
17 ~~subsidiary's parent corporation].~~

18 SECTION 49. Section 171.203, Tax Code, is amended by adding
19 Subsection (f) to read as follows:

20 (f) A public information report that is filed
21 electronically complies with the signature and certification
22 requirements prescribed by Subsection (d).

23 SECTION 50. Subchapter O, Chapter 171, Tax Code, is amended
24 by adding Section 171.731 to read as follows:

25 Sec. 171.731. ASSIGNMENT PROHIBITED. A corporation may not
26 convey, assign, or transfer the credit allowed under this
27 subchapter to another entity unless all of the assets of the

1 corporation are conveyed, assigned, or transferred in the same
2 transaction.

3 SECTION 51. Section 171.751(1), Tax Code, is amended to
4 read as follows:

5 (1) "Agricultural processing" means an establishment
6 primarily engaged in activities described in categories 0724,
7 2011-2099, 2211, 2231, 2824, 2833, 2834, 2835, 2836, 2841,
8 3111-3199, 3262, or 3952, in product classes 28692 or 28698 of
9 category 2869, or in product classes 28992 or 28994 of category 2899
10 of the 1987 Standard Industrial Classification Manual published by
11 the federal Office of Management and Budget.

12 SECTION 52. Subchapter P, Chapter 171, Tax Code, is amended
13 by adding Section 171.7515 to read as follows:

14 Sec. 171.7515. "QUALIFIED BUSINESS." (a) In addition to the
15 meaning assigned by Section 171.751(8), "qualified business" also
16 means an establishment certified by the Texas Department of
17 Economic Development as a qualified business under Section 2303.402
18 or 2310.302, Government Code.

19 (b) This section expires January 1, 2005.

20 SECTION 53. Section 171.753, Tax Code, is amended to read as
21 follows:

22 Sec. 171.753. CALCULATION OF CREDIT. A corporation may
23 establish a credit equal to five percent of the total wages and
24 salaries paid by the corporation for qualifying jobs during the
25 period upon which the tax is based, on each of five consecutive
26 reports beginning with the report based on the period during which
27 the qualifying jobs were created.

1 SECTION 54. Subchapter P, Chapter 171, Tax Code, is amended
2 by adding Section 171.7541 to read as follows:

3 Sec. 171.7541. LENGTH OF CREDIT. Notwithstanding Section
4 171.753, a corporation that has been designated as an enterprise
5 project or as a defense readjustment project on or after September
6 1, 2001, may, beginning on the date the project is designated,
7 establish a credit equal to 25 percent of the total wages and
8 salaries paid by the corporation for qualifying jobs. Subject to
9 Section 171.755, the corporation may claim the entire credit earned
10 on a report originally due on or after September 1, 2003, and before
11 January 1, 2006. This section expires January 1, 2006.

12 SECTION 55. Section 171.802, Tax Code, is amended by adding
13 Subsection (d) to read as follows:

14 (d) A corporation that is certified by the Texas Department
15 of Economic Development as a qualified business under Section
16 2303.402 or 2310.302, Government Code, may qualify for the credit
17 provided by this subchapter, regardless of whether the corporation
18 meets the qualifications prescribed by Subsection (b). This
19 subsection expires January 1, 2005.

20 SECTION 56. Section 171.803, Tax Code, is amended to read as
21 follows:

22 Sec. 171.803. CALCULATION OF CREDIT. (a) Except as provided
23 by Subsection (b), a [A] corporation may establish a credit equal to
24 7.5 percent of the qualified capital investment during the period
25 upon which the tax is based.

26 (b) A corporation that has been designated as an enterprise
27 project or as a defense readjustment project on or after September

1 1, 2001, may, beginning on the date the project is designated,
2 establish a credit equal to 7.5 percent of the qualified capital
3 investment. This subsection expires January 1, 2006.

4 SECTION 57. Section 171.804(b), Tax Code, as effective
5 September 1, 2003, is amended to read as follows:

6 (b) Subject to Section 171.805, a corporation that has been
7 designated as an enterprise project or as a defense readjustment
8 project may claim the entire credit earned on a report originally
9 due on or after September 1, 2003, and before January 1, 2006
10 ~~[during an accounting period against the taxes imposed for the~~
11 ~~corresponding reporting period].~~

12 SECTION 58. Section 171.853(c), Tax Code, is amended to
13 read as follows:

14 (c) The credit claimed for each privilege period may not
15 exceed 50 percent of the amount of ~~[net]~~ franchise tax due, before
16 ~~[after]~~ any other applicable tax credits, for the privilege period.

17 SECTION 59. Chapter 171, Tax Code, is amended by adding
18 Subchapter U to read as follows:

19 SUBCHAPTER U. TAX CREDIT FOR TITLE INSURANCE HOLDING

20 COMPANIES

21 Sec. 171.891. APPLICABILITY OF DEFINITIONS. In this
22 subchapter:

23 (1) "Control" has the meaning described by Sections
24 823.005 and 823.151, Insurance Code.

25 (2) "Controlled insurer," "domestic insurer," and
26 "holding company" have the meanings assigned by Section 823.002,
27 Insurance Code.

1 (3) "Title insurance," "title insurance agent," and
2 "title insurance company" have the meanings assigned by Section
3 2501.003, Insurance Code.

4 Sec. 171.892. ELIGIBILITY. A corporation is entitled to a
5 credit as provided by this subchapter against the tax imposed under
6 this chapter if the corporation:

7 (1) is a title insurance holding company subject to
8 Chapter 823, Insurance Code; and

9 (2) controls one or more domestic title insurance
10 companies that are subject to the tax on premiums imposed under
11 Article 9.59, Insurance Code.

12 Sec. 171.893. AMOUNT; LIMITATIONS. (a) The amount of the
13 credit for each controlled domestic title insurance company is
14 computed by multiplying the amount of tax on premiums paid by that
15 company in the most recent calendar year ending before the
16 franchise tax report is due by the percentage of ownership of the
17 title insurance holding company in the controlled domestic title
18 insurance company. The percentage of ownership of a controlled
19 domestic title insurance company is determined as of the accounting
20 year-end on which the report is based.

21 (b) A claim for a credit is subject to the following
22 limitations:

23 (1) if the total amount of the credit for all
24 controlled title insurance companies exceeds the franchise tax due,
25 the credit is an amount equal to the franchise tax due;

26 (2) no portion of a credit may be applied to another
27 year's franchise tax report; and

1 (3) a corporation may not take credit for the same tax
2 on premiums more than once.

3 Sec. 171.894. EFFECT ON OTHER TAXES. This subchapter does
4 not exempt a title insurance holding company, a title insurance
5 company, or a title insurance agent from paying a tax imposed by
6 this code, except that a title insurance company or a title
7 insurance agent whose principal activity is the business of title
8 insurance is exempt from a tax imposed by this chapter.

9 SECTION 60. Section 201.057(c), Tax Code, is amended to
10 read as follows:

11 (c) High-cost gas as defined in Subsection (a)(2)(A)
12 produced from a well that is spudded or completed after August 31,
13 1996, [~~and before September 1, 2010,~~] is entitled to a reduction of
14 the tax imposed by this chapter for the first 120 consecutive
15 calendar months beginning on the first day of production, or until
16 the cumulative value of the tax reduction equals 50 percent of the
17 drilling and completion costs incurred for the well, whichever
18 occurs first. The amount of tax reduction shall be computed by
19 subtracting from the tax rate imposed by Section 201.052 the
20 product of that tax rate times the ratio of drilling and completion
21 costs incurred for the well to twice the median drilling and
22 completion costs for high-cost wells as defined in Subsection
23 (a)(2)(A) spudded or completed during the previous state fiscal
24 year, except that the effective rate of tax may not be reduced below
25 zero.

26 SECTION 61. Section 202.054(c), Tax Code, is amended to
27 read as follows:

1 (c) This section applies to an enhanced recovery project
2 that begins active operation on or after September 1, 1989, and to
3 an expansion that the commission approves on or after September 1,
4 1991. An application for approval under this section must be filed
5 on or after September 1, 1989, [~~and before January 1, 2008,~~] for a
6 new enhanced recovery project. An application for approval under
7 this section must be filed on or after September 1, 1991, [~~and~~
8 ~~before January 1, 2008,~~] for an expansion of an existing enhanced
9 recovery project. A project may not qualify as an expansion if the
10 project has qualified as a new enhanced recovery project under this
11 section. An application may be filed on or after September 1, 1989,
12 even if a separate application for approval of the project or
13 expansion has already been filed under Subchapter B, Chapter 101,
14 Natural Resources Code, or for approval as a tertiary recovery
15 project for purposes of Section 4993, Internal Revenue Code of
16 1986, if the operation of a new project or the expansion of an
17 existing project, other than a co-production project, does not
18 begin before the application for approval under this section is
19 approved by the commission; provided, however, nothing herein
20 shall require commission approval of a co-production project prior
21 to commencing active operations on such project in order for such
22 project to be eligible for the recovered oil tax rate.

23 SECTION 62. Subchapter B, Chapter 321, Tax Code, is amended
24 by adding Section 321.107 to read as follows:

25 Sec. 321.107. ADMINISTRATION OF LOCAL SALES AND USE TAXES
26 IMPOSED BY OTHER GOVERNMENTAL ENTITIES. The imposition,
27 computation, administration, enforcement, and collection of any

1 local sales and use tax imposed by any other local governmental
2 entity is governed by this chapter, except as otherwise provided by
3 law. In this section, "other local governmental entity" includes
4 any governmental entity created by the legislature that has a
5 limited purpose or function, that has a defined or restricted
6 geographic territory, and that is authorized by law to impose a
7 local sales and use tax. The term does not include a county, county
8 health services district, county landfill and criminal detention
9 center district, metropolitan transportation authority, economic
10 development district, crime control district, hospital district,
11 emergency services district, or library district.

12 SECTION 63. Section 321.203(j), Tax Code, is amended to
13 read as follows:

14 (j) The sale of [~~cable television~~] services delivered
15 through a cable system is consummated at the point of delivery to
16 the consumer.

17 SECTION 64. Section 322.001(a), Tax Code, is amended to
18 read as follows:

19 (a) This chapter applies to the imposition, assessment,
20 collection, administration, and enforcement of a sales and use tax
21 imposed under Chapter 451, 452, [~~or~~] 453, or 460, Transportation
22 Code.

23 SECTION 65. Section 322.002(1), Tax Code, is amended to
24 read as follows:

25 (1) "Taxing entity" means a rapid transit authority, a
26 regional transit authority, including a subregional transportation
27 authority, or a municipal mass transit department created under

1 Chapter 451, 452, or 453, Transportation Code, or a coordinated
2 county transportation authority created under Chapter 460,
3 Transportation Code, that has adopted a sales and use tax under the
4 law authorizing the creation of the entity.

5 SECTION 66. Section 323.203(j), Tax Code, is amended to
6 read as follows:

7 (j) The sale of [~~cable television~~] services delivered
8 through a cable system is consummated at the point of delivery to
9 the consumer.

10 SECTION 67. The following are repealed:

11 (1) Section 171.754, Tax Code;

12 (2) Section 2.08, Chapter 1134, Acts of the 77th
13 Legislature, Regular Session, 2001; and

14 (3) Section 16, Article 9.59, Insurance Code.

15 SECTION 68. Each change in law made to the following
16 provisions by this Act is a clarification of existing law and does
17 not imply that existing law may be construed as inconsistent with
18 the law as amended by this Act:

19 (1) Section 1, Article 4.10, Insurance Code;

20 (2) Article 4.17(a), Insurance Code;

21 (3) Article 20A.33(d), Insurance Code;

22 (4) Section 101.053(b), Insurance Code;

23 (5) Section 912.002(b), Insurance Code;

24 (6) Section 376.470(d), Local Government Code, as
25 added by Chapter 1433, Acts of the 77th Legislature, Regular
26 Session, 2001;

27 (7) Section 2153.153(a), Occupations Code;

- 1 (8) Section 151.0035, Tax Code;
- 2 (9) Section 151.005, Tax Code;
- 3 (10) Section 151.056(f), Tax Code;
- 4 (11) Section 151.313(a), Tax Code;
- 5 (12) Section 151.3501, Tax Code;
- 6 (13) Section 151.355, Tax Code;
- 7 (14) Section 153.013(a), Tax Code;
- 8 (15) Section 153.120, Tax Code;
- 9 (16) Section 153.205, Tax Code;
- 10 (17) Section 153.222(a), Tax Code;
- 11 (18) Section 153.403, Tax Code;
- 12 (19) Section 171.052, Tax Code;
- 13 (20) Section 171.084(c), Tax Code;
- 14 (21) Section 171.1032(b), Tax Code;
- 15 (22) Section 171.1051(c), Tax Code;
- 16 (23) Section 171.106(i), Tax Code;
- 17 (24) Sections 171.110(a), (b), (c), (k), and (l), Tax
18 Code;
- 19 (25) Section 171.731, Tax Code;
- 20 (26) Section 171.751(1), Tax Code;
- 21 (27) Subchapter U, Chapter 171, Tax Code;
- 22 (28) Section 321.107, Tax Code;
- 23 (29) Section 322.001(a), Tax Code; and
- 24 (30) Section 322.002(1), Tax Code.

25 SECTION 69. To the extent of any conflict, this Act prevails
26 over another Act of the 78th Legislature, Regular Session, 2003,
27 relating to nonsubstantive codifications of law or nonsubstantive

1 additions to and corrections in enacted codes.

2 SECTION 70. (a) Except as otherwise provided by this
3 section, this Act takes effect September 1, 2003.

4 (b) Sections 14, 28, 36, and 37 of this Act take effect
5 October 1, 2003.

6 (c) Section 15 of this Act applies only to a tax lien filed
7 on or after the effective date of this Act. A tax lien filed before
8 the effective date of this Act is governed by the law in effect on
9 the date the tax lien is filed, and that law is continued in effect
10 for that purpose.

11 (d) Sections 2, 4, 5, 7, and 8 of this Act take effect
12 January 1, 2004.

13 (e) Sections 46, 49, and 58 of this Act take effect January
14 1, 2004, and apply to reports originally due on or after that date.
15 A report originally due before January 1, 2004, is governed by the
16 law in effect on the date the report is originally due, and that law
17 is continued in effect for that purpose.

18 (f) Sections 51, 52, 53, 54, 55, 56, and 57 of this Act apply
19 only to a report originally due on or after the effective date of
20 this Act.

21 (g) Section 156.104(b), Tax Code, as added by Section 38 of
22 this Act, takes effect January 1, 2004.