

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 154. CIGARETTE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.001. DEFINITIONS. In this chapter:

(1) "Bonded agent" means a person in this state who is an agent of a person outside this state and receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the person outside this state.

(2) "Cigarette" means a roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(3) "Commercial business location" means the entire premises occupied by a permit applicant or a person required to hold a permit under this chapter.

(4) "Common carrier" means a motor carrier registered under Chapter 643, Transportation Code, or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or a successor agency to the Interstate Commerce Commission.

(5) "Consumer" means a person who possesses cigarettes for personal consumption.

(6) "Counterfeit stamp" means a sticker, label, print, tag, or token that is used or is intended to be used to simulate a stamp and that is not authorized or issued by the comptroller.

(7) "Distributor" means a person who:

(A) is authorized to purchase for the purpose of making a first sale in this state cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state,

acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer or import broker.

(8) "Export warehouse" means a person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(9) "First sale" means, except as otherwise provided by this chapter:

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in intrastate commerce;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss.

(10) "Importer" or "import broker" means a person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(11) "Individual package of cigarettes" means a package that contains not fewer than 10 cigarettes.

(12) "Manufacturer" means a person who manufactures and sells cigarettes to a distributor.

(13) "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(14) "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer required to obtain a permit under Section [154.101](#).

(15) "Place of business" means:

(A) a commercial business location where cigarettes are sold;

(B) a commercial business location where cigarettes are kept for sale or consumption or otherwise stored; or

(C) a vehicle from which cigarettes are sold.

(16) "Previously used stamp" means a stamp that has been used to show payment of a tax imposed by this chapter and is again used, sold, or possessed for sale or use to show payment of a tax imposed by this chapter.

(17) "Retailer" means a person who engages in the practice of selling cigarettes to consumers and includes the owner of a coin-operated cigarette vending machine.

(18) "Stamp" includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by this chapter; and

(C) is consecutively numbered and uniquely identifiable as a Texas tax stamp.

(19) "Wholesaler" means a person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale but who is not a distributor.

Acts 1981, 67th Leg., p. 1638, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 1, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 1, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 1, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 705, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.262, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1040, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.15, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 46, eff. Oct. 1, 2001.

Sec. 154.002. STORAGE. The commercial business location where cigarettes are stored or kept cannot be a residence or a unit in a public storage facility.

Added by Acts 2001, 77th Leg., ch. 540, Sec. 2, eff. Sept. 1, 2001.

#### SUBCHAPTER B. IMPOSITION AND RATE OF TAX

Sec. 154.021. IMPOSITION AND RATE OF TAX. (a) A tax is

imposed on a person who uses or disposes of cigarettes in this state.

(b) The tax rates are:

(1) \$70.50 per thousand on cigarettes weighing three pounds or less per thousand; and

(2) the rate provided by Subdivision (1) plus \$2.10 per thousand on cigarettes weighing more than three pounds per thousand.

Acts 1981, 67th Leg., p. 1640, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 2, Sec. 1, eff. Aug. 1, 1984, Sec. 2, eff. Sept. 1, 1985; Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 4, Sec. 1; Acts 1990, 71st Leg., 6th C.S., ch. 5, Sec. 2.01, eff. July 1, 1990.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 7 (H.B. 5), Sec. 1, eff. January 1, 2007.

Sec. 154.022. TAX IMPOSED ON FIRST SALE OF CIGARETTES. The cigarette tax is imposed and becomes due and payable when a person in this state receives cigarettes to make a first sale.

Acts 1981, 67th Leg., p. 1640, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 2, eff. June 7, 1991.

Sec. 154.023. IMPACT OF TAX. The ultimate consumer or user in this state bears the impact of the tax imposed by this chapter. If another person pays the tax, the amount of the tax is added to the price to the ultimate consumer or user.

Acts 1981, 67th Leg., p. 1640, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.024. IMPORTATION OF SMALL QUANTITIES. (a) A person who imports and personally transports 200 or fewer cigarettes into this state from another state is not required to pay the tax imposed by this chapter if the person uses the cigarettes and does not sell them or offer them for sale. A person who imports and personally transports 200 or fewer cigarettes into this state from a foreign country shall pay the tax imposed by this chapter and have affixed on each individual package of cigarettes a stamp to

show payment of the tax.

(b) Employees of the Texas Alcoholic Beverage Commission who collect taxes on alcoholic beverages at ports of entry shall collect at the ports of entry the tax imposed by this chapter on cigarettes imported into this state. In computing the amount of taxes to be collected, the commission may round the total amount up to the nearest quarter of a dollar.

(c) The comptroller and the Texas Alcoholic Beverage Commission shall make rules for the administration of this section. Acts 1981, 67th Leg., p. 1640, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 2, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1110, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 792 (S.B. 269), Sec. 2, eff. September 1, 2005.

Sec. 154.025. LIEN TO SECURE PAYMENT OF TAX. (a) In this section, "collecting agent" means a person who pays or who is liable for payment of the tax imposed under Section 154.022 and who is not the consumer of the cigarettes on which the tax is imposed.

(b) A collecting agent is an agent of the state for the purpose of collecting the cigarette tax for the state.

(c) A collecting agent has a lien on:

(1) cigarettes on which the collecting agent has paid or is liable for the payment of the tax imposed under Section 154.022; and

(2) the proceeds from the sale of the cigarettes.

(d) The lien under this section attaches to all cigarettes purchased from a collecting agent and all proceeds from the sale of the cigarettes on the date that the cigarettes are sold by the collecting agent. An action by the collecting agent or any other person is not required to perfect the lien.

(e) The lien under this section takes priority over any other lien on the cigarettes purchased from a collecting agent and the proceeds from the sale of the cigarettes, except the preferred state tax lien under Section 154.413.

(f) A collecting agent may enforce a lien under this section through any legal proceeding, including a proceeding under Title 11, U.S.C., and assertion of an administrative priority claim to the extent that the lien does not adequately protect the collecting agent.

(g) A prior demand is not required to commence an action to enforce a lien under this section.

(h) In an action to enforce a lien under this section, a court may prevent the resale of any cigarettes on which a collecting agent has the lien by any appropriate order, including the seizure of the cigarettes by an appropriate legal officer through attachment, sequestration, or other procedure. It is not a defense to the granting of injunctive relief by the court that remedies at law, including a suit for damages, are available.

(i) A court shall distribute money received from the foreclosure of a lien under this section in the following order:

(1) payment of all costs and expenses, including attorney fees, incurred by a collecting agent to enforce the lien;

(2) payment of taxes on the cigarettes purchased from the collecting agent and subject to the lien, including not only the taxes on the cigarettes and proceeds subject to the foreclosure but also the taxes on all cigarettes for which the collecting agent has not received payment in accordance with the terms of the agreement between the collecting agent and the person to whom the collecting agent sold the cigarettes; and

(3) any remaining money to the person against whom the lien operates.

(j) A lien under this section may not be waived if the tax payment that is secured by the lien has not been paid to the collecting agent. A purported waiver of the tax payment is void.

(k) To the extent allowed by law, the priority claim of the comptroller under 11 U.S.C. Section 507(d) for taxes imposed by Section [154.022](#) is assigned to the collecting agent.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 3, eff. June 7, 1991.  
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.17, eff. Sept. 1, 1997.

SUBCHAPTER C. TAX STAMPS

Sec. 154.041. STAMP REQUIRED. (a) A person who pays a tax imposed by this chapter shall securely affix a stamp to each individual package of cigarettes to show payment of the tax.

(b) Except as provided by Section 154.152, each distributor shall obtain the necessary stamps before receiving or accepting delivery of unstamped packages of cigarettes. The possession of unstamped packages of cigarettes without the possession of the requisite amount or number of stamps is prima facie evidence that the cigarettes are possessed for the purpose of making a first sale without stamps and without payment of the tax imposed by this chapter.

(c) The absence of a stamp on an individual package of cigarettes is notice that the tax has not been paid.

(d) A manufacturer of cigarettes outside this state may purchase a stamp and affix it to the individual package and no further payment of the tax is required.

(e) The transfer of possession of cigarettes by a bonded agent to a distributor in this state, under instructions received from outside this state, is not a first sale.

Acts 1981, 67th Leg., p. 1640, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 788, ch. 188, Sec. 1, eff. May 21, 1983; Acts 1991, 72nd Leg., ch. 409, Sec. 4, eff. June 7, 1991.

Sec. 154.0415. CIGARETTES TO WHICH STAMPS MAY NOT BE AFFIXED. A person may not affix a stamp to a package of cigarettes if the package:

(1) does not comply with the Cigarette Labeling and Advertising Act (15 U.S.C. Section 1331 et seq.) for the placement of labels, warnings, or any other information for a package of cigarettes to be sold within the United States;

(2) is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or other wording indicating that the manufacturer did not intend that the product be sold in the United States;

(3) has been altered by adding or deleting wording,

labels, or warnings described in Subdivision (1) or (2);

(4) has been imported into the United States in violation of 26 U.S.C. Section 5754;

(5) in any way violates federal trademark or copyright laws; or

(6) contains cigarettes with respect to which any person is not in compliance with 15 U.S.C. Section 1335a, as amended, relating to submission of ingredient information to federal authorities, 19 U.S.C. Sections 1681-1681b, as amended, relating to imports of certain cigarettes, 26 U.S.C. Section 5754, as amended, or relating to previously exported tobacco products.

Added by Acts 1999, 76th Leg., ch. 1539, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1104, Sec. 1, eff. Sept. 1, 2001.

Sec. 154.042. DISTRIBUTOR. (a) A distributor shall affix the required tax stamps to each individual package that is to be sold, offered for sale, consumed, distributed, handled, or transported.

(b) Except as provided by Subsection (c), each distributor in this state shall affix the required stamps within 96 hours after receiving the cigarettes, excluding Saturdays, Sundays, and legal holidays.

(c) If a distributor reasonably foresees that the distributor will receive cigarettes in quantities that will make compliance with Subsection (b) commercially impracticable in the normal course of business, the distributor shall provide the comptroller, before receipt of the cigarettes, with advance written notice of the anticipated noncompliance and a plan for achieving compliance. On receipt of the written notice, the comptroller shall review the plan and determine whether to provide an extension of time in which the tax stamps must be affixed after the distributor receives the cigarettes. The comptroller may not unreasonably withhold an extension of time.

(d) A plan for achieving compliance that is submitted to the comptroller under Subsection (c) is confidential and not subject to Chapter 552, Government Code.

Acts 1981, 67th Leg., p. 1641, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 5, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1000, Sec. 37, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.18, eff. Sept. 1, 1997.

Sec. 154.043. SALE OF STAMPS. Except as provided in Section 154.044 of this code, only the comptroller may sell cigarette stamps. The stamps may be sold only in quantities made available by the comptroller. The purchaser shall place the order for stamps directly with the comptroller.

Acts 1981, 67th Leg., p. 1641, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 89, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 19.19, eff. Sept. 1, 1997.

Sec. 154.044. PURCHASE FROM A DISTRIBUTOR. (a) If a distributor does not possess sufficient unused stamps to cover the distributor's inventory of unstamped cigarettes, the comptroller may allow the distributor to purchase the required stamps from any distributor through a requisition from the comptroller so that the unstamped cigarettes may be stamped immediately under the direction of the comptroller.

(b) The comptroller may issue the requisition. The requisition shall be in triplicate on a form prescribed by the comptroller. The copies shall be designated "original," "duplicate," and "triplicate." The comptroller shall keep the original and send the duplicate to the purchaser and the triplicate to the seller. The purchaser and seller shall keep their respective copies available at all times for four years for inspection by the comptroller and the attorney general.

Acts 1981, 67th Leg., p. 1641, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 3, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 6, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.20, eff. Sept. 1, 1997.

Sec. 154.045. RECALL BY COMPTROLLER. (a) The comptroller may recall unused stamps.

(b) If the comptroller recalls stamps, the purchaser, on the comptroller's demand, shall surrender the stamps to the comptroller for exchange.

(c) If the comptroller recalls stamps and receives them from the purchaser, the comptroller shall issue stamps with different serial numbers for the recalled stamps.

Acts 1981, 67th Leg., p. 1641, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 4, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.21, eff. Sept. 1, 1997.

Sec. 154.046. INVOICE FOR STAMPS. (a) The comptroller shall send an original invoice along with any stamps shipped to a distributor.

(b) The invoice shall be issued in duplicate and numbered consecutively. The invoice must show:

- (1) the date of sale;
- (2) the name and address of the distributor;
- (3) the number of stamps;
- (4) the serial numbers of the stamps; and
- (5) the denomination and value of the stamps.

(c) The distributor shall have the original invoice available at all times for four years for inspection by the comptroller and the attorney general.

Acts 1981, 67th Leg., p. 1641, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 5, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 7, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.22, eff. Sept. 1, 1997.

Sec. 154.047. STAMPS SHIPPED WITH DRAFT ATTACHED. (a) A distributor may order stamps to be shipped to a bank with which the distributor regularly transacts business if the bank is a designated state depository under Section 404.022, Government Code. The comptroller may ship the stamps to the bank with the invoice required by Section 154.046 and a form draft.

(b) The comptroller shall prescribe the form of the draft. The draft must show:

- (1) the amount of the draft;

- (2) the name of the distributor;
- (3) the name and address of the bank; and
- (4) the date of shipment.

(c) If the draft is not paid within 20 days after the date of the draft, the bank shall return the draft and stamps to the comptroller. The comptroller shall notify the distributor to appear before the comptroller to show cause why the distributor should not be denied the privilege of ordering stamps shipped with draft attached. If the distributor fails to show good cause, the comptroller may stop shipping stamps with draft attached.

Acts 1981, 67th Leg., p. 1642, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 89, Sec. 2, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 409, Sec. 8, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.23, eff. Sept. 1, 1997.

Sec. 154.050. PAYMENT. (a) The comptroller shall require that payment in full for stamps be made within 30 days after the date stamps and an accompanying invoice from the comptroller are received by the distributor, except that at the close of each biennium, payment for stamps purchased or received on or before August 31 of that fiscal year shall be made in full on or before August 31 of that fiscal year, providing that such payment be received in the office of the comptroller no later than August 31 of that fiscal year notwithstanding any other statute regarding tax due dates to the contrary.

(b) The comptroller may not ship stamps without advance payment under this section unless the distributor has satisfied all requirements imposed under Section [154.051](#).

(c) Payment for stamps must be made by cashier's check payable to the comptroller, electronic funds transfer to the comptroller, or any other method of payment authorized by the comptroller.

(d) The dishonor of a check delivered to the comptroller for payment of stamps constitutes a failure to pay the tax when due.

Acts 1981, 67th Leg., p. 1642, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2779, ch. 752, Sec. 12, eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 580, Sec. 1, eff. Sept. 1,

1987; Acts 1989, 71st Leg., ch. 240, Sec. 7, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 10, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1040, Sec. 42, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.26, eff. Sept. 1, 1997.

Sec. 154.051. CIGARETTE TAX RECOVERY TRUST FUND. (a) The cigarette tax recovery trust fund is a private trust fund established outside the state treasury and as provided by this section secures the payment of cigarette taxes by distributors who contribute to the fund. The fund is composed of the total amount in the separate accounts maintained in trust for all contributing distributors as provided by this section. The assets of the fund, including interest earned by those assets, are to be held in trust for the benefit and protection of the state treasury, and may not be diverted, distributed, or appropriated for any purpose other than as provided by this section. Interest earned by a distributor's account but not yet refunded to the distributor pursuant to Subsection (d) shall, on a monthly basis, be paid to the comptroller as provided by Subsection (b) or credited to the distributor's account.

(b) The comptroller is the trustee of the fund as provided by Section 404.073, Government Code, and shall manage the fund as provided by this section. In investing the assets of the fund, the comptroller has the obligations, duties, and powers provided for the investment of state funds by Sections 404.021 through 404.0245, Government Code. The comptroller shall receive five percent of the interest earned on all assets of the fund as compensation for serving as trustee of the fund.

(c) A distributor who orders stamps from the comptroller under this chapter without advance payment shall contribute to an account maintained in the distributor's name in the fund money in the amount of each allowance to which the distributor is entitled under Section 154.052. When the money in the distributor's account equals 20 percent of the designated amount of stamps requested by the distributor and approved by the comptroller to be purchased in any one month, the distributor's interest in the fund becomes vested.

(d) Except as provided by Subsection (g) of this section, on the last day of each quarter after the quarter in which a distributor's interest in the fund becomes vested, the comptroller shall refund to the distributor all money contributed to the fund by the distributor under Subsection (c) of this section in the earliest preceding quarter for which a refund has not been paid, plus interest earned on that amount, as long as the distributor's interest in the fund remains vested.

(e) Until a distributor who orders stamps without advance payment acquires a vested interest in the fund, the comptroller may require the distributor to post with the comptroller an irrevocable letter of credit drawn in the form and amount specified by the comptroller to secure the payment of cigarette taxes by that distributor. The comptroller may not ship stamps to a distributor not having a vested interest in the fund without advance payment until the distributor posts the required letter of credit.

(f) In addition to any other requirement under this section, the comptroller as a condition for shipping stamps without advance payment may:

(1) require a fiscal-year-end financial statement, including a balance sheet and income statement verifiable as to its accuracy or other financial information acceptable to the comptroller and verifiable as to its accuracy;

(2) require indemnification from each officer, director, and stockholder owning 10 percent or more of outstanding stock, if the distributor is a corporation, from each partner, if the distributor is a partnership, from each member or owner of a joint venture or syndication, and from the owner of a sole proprietorship;

(3) require the distributor to obtain and provide the comptroller with a credit report from a credit reporting agency acceptable to the comptroller;

(4) require a distributor to increase the balance in its account in the fund;

(5) require a distributor to post a letter of credit;

(6) reduce a distributor's credit time or amount; or

(7) take any other reasonable and necessary action to

protect the state treasury from loss due to the nonpayment of cigarette taxes.

(g) If a distributor who has an account in the fund fails to pay in full a tax imposed by this chapter by the due date, the comptroller, without prior notice to the distributor or any other preliminary procedure, may seize any unaffixed stamps and any stamped cigarette packages, up to and including the full amount of unpaid tax. If the proceeds from the seizure do not satisfy the total tax deficiency or the comptroller does not seize any unaffixed stamps or stamped cigarette packages, the comptroller may withdraw immediately from the fund an amount equal to the amount of unpaid taxes due. The comptroller shall first withdraw the amount from the account of the defaulting distributor. The comptroller shall use the comptroller's best efforts to collect the tax due from the defaulting distributor before withdrawing money from the other accounts in the fund to satisfy the tax liability. If that distributor's account does not contain sufficient money to satisfy the tax liability in full, the comptroller shall withdraw the additional amount necessary to satisfy that liability from the other accounts in the fund in proportion to the balance of each account, except that the withdrawal from any other distributor's account in the fund is limited to an amount not greater than 50 percent of the designated amount of stamps requested by the distributor under Subsection (c) or of the amount required by the comptroller under Subsection (f)(4). Not later than the fifth day after the date of a withdrawal, the comptroller shall notify each distributor of the withdrawal from its account and the amount withdrawn. If as a result of a withdrawal made under this subsection a distributor's balance in its account is reduced to an amount less than the minimum required under this section, the distributor's interest in the fund is no longer vested, and the comptroller may discontinue refunds to the distributor under Subsection (d) until the distributor again acquires a vested interest in the fund. The comptroller may require a distributor whose interest in the fund is no longer vested to post an irrevocable letter of credit with the comptroller to secure the payment of cigarette taxes by the distributor. To protect the fund,

each distributor having an account in the fund must indemnify the fund against any amount withdrawn from the fund under this subsection because of the failure of the distributor to pay in full a tax imposed by this chapter by the due date.

(h) If distributor accounts, other than a defaulting distributor account, are drawn pursuant to Subsection (g), each affected, nondefaulting distributor shall have a claim against the defaulting distributor for the amount so drawn. The comptroller is hereby appointed trustee, agent, and assignee of each affected, nondefaulting distributor for purposes of seeking recovery of the amount so drawn. The comptroller shall have the sole judgment and discretion in deciding whether or not to pursue such a claim and shall have discretion to handle any such claim on any basis that in the opinion of the comptroller is in the best interest of the fund. The comptroller is released from any liability related to the handling of the claims described in this section except for intentional or wilful misconduct.

(i) A distributor or person authorized to act on behalf of a distributor may notify the comptroller in writing that the distributor no longer desires to have stamps shipped or a meter set without advance payment, and may request that the money in the distributor's account in the fund be paid to the distributor or the distributor's heirs or assigns. The comptroller shall pay the money in the distributor's account as requested at the end of the next quarter after all outstanding taxes owed to the state by the distributor have been paid.

(j) Under no circumstances shall the comptroller return to any distributor an amount greater than the balance in the distributor's account within the cigarette tax recovery trust fund less any sums drawn pursuant to Subsection (g). The State of Texas' liability to any distributor pursuant to this section is expressly limited to the sums on deposit in the distributor's account at the time the request for return of funds is made.

(k) The comptroller may adopt and enforce rules necessary to carry out this section.

(l) For purposes of this section, "quarter" refers to a quarter of the state's fiscal year.

(m) Information provided under Subsection (f) is confidential and not subject to Chapter 552, Government Code.

(n) The comptroller shall regularly distribute financial information regarding the performance of the fund to participating distributors on a regular basis. On the written request of a participating distributor, the comptroller shall provide the distributor with the name and address of each distributor participating in the fund, the percentage of the total fund represented by each distributor's account, and the total amount of money in the fund.

(o) In lieu of participation in the cigarette tax recovery trust fund to secure payment for stamps and in lieu of advance payment for stamps, a distributor may pledge to the comptroller sufficient collateral to secure payment for stamps. Such pledge shall be evidenced by a pledge agreement in a form promulgated by the comptroller, and such collateral shall consist of certificates of deposit, treasury notes, treasury bills, or other similar types of collateral acceptable to the comptroller and held in a separate trust fund established in the Texas Treasury Safekeeping Trust Company. All interest earned on such collateral shall belong to the distributor. The comptroller may require the pledge of additional collateral in the event the comptroller determines that the fair market value of the pledged collateral is less than the amount due the comptroller for stamps. On the written request of the distributor, the comptroller shall release collateral from the pledge agreement or allow the substitution of collateral subject to the pledge agreement if after such release or substitution the fair market value of the collateral subject to the pledge will be equal to or greater than the amount due the comptroller for stamps. If a distributor fails to pay tax in full when due, the comptroller may, if the distributor does not pay such past due tax and any penalty related thereto within three days after receipt of written notice of such failure from the comptroller, sell or dispose of the collateral and apply the proceeds to the payment of taxes, interest, penalties, and costs due to the comptroller by the distributor, with any remaining proceeds being refunded to the distributor.

Acts 1981, 67th Leg., p. 1643, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 89, Sec. 3, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 580, Sec. 2, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 409, Sec. 11, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1000, Sec. 38, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1040, Sec. 43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.27, eff. Sept. 1, 1997.

Sec. 154.052. DISTRIBUTOR'S STAMPING ALLOWANCE. (a) A distributor is, subject to the provisions of Section [154.051](#), entitled to 2.5 percent of the face value of stamps purchased as a stamping allowance for providing the service of affixing stamps to cigarette packages, except that an out-of-state distributor is entitled to receive only the same percentage of stamping allowance as that given to Texas distributors doing business in the state of the distributor.

(b) If a distributor violates a provision of this chapter, the distributor is not entitled to receive a stamping allowance for the period of the violation. On a determination by the comptroller that the distributor is no longer in violation of a provision of this chapter, the distributor is entitled to receive a stamping allowance.

Acts 1981, 67th Leg., p. 1643, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1987, 70th Leg., ch. 580, Sec. 3, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 240, Sec. 8, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 12, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.28, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 11.01, eff. October 1, 2011.

Sec. 154.053. MANUFACTURE OF STAMPS. (a) The comptroller shall design and have printed or manufactured cigarette tax stamps. If the comptroller determines that it is necessary for the best enforcement of this chapter, the comptroller may change the design,

color, or denomination of the stamps. The comptroller shall determine the size, design, color, or denomination, and quantity of stamps manufactured. The stamps shall be manufactured so that they may be easily and securely attached to an individual package of cigarettes. The comptroller may designate the method of identification for the stamps and shall award the contract for the printing or manufacturing to the person submitting the bid that will give the best protection to the state in enforcing this chapter.

(b) The comptroller shall designate the date of issue of new stamps by issuing a proclamation. The date of the proclamation is the date of issue.

(c) The comptroller shall design and furnish stamps in a manner that permits identification of the person that affixed the stamp to the particular package of cigarettes by means of a number or other mark on the stamp. The comptroller shall maintain for at least four years the information identifying the person that affixed the stamp to each package of cigarettes.

Acts 1981, 67th Leg., p. 1643, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 9, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 13, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.29, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1104, Sec. 2, eff. Sept. 1, 2001.

Sec. 154.054. REDEMPTION AND DESTRUCTION OF STAMPS. (a) The comptroller may redeem unused cigarette tax stamps that were lawfully issued before a design, color, or denomination change.

(b) The comptroller may destroy stamps in the manner the comptroller considers best.

Acts 1981, 67th Leg., p. 1643, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 10, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 14, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.3, eff. Sept. 1, 1997.

Sec. 154.058. INVENTORY ON TAX INCREASE. (a) On the effective date of a tax increase, each distributor, wholesaler, and retailer who has 2,000 or more cigarettes in packages stamped with

stamps of an old design, color, or denomination shall immediately inventory the packages and any unused stamps of an old design, color, or denomination and file a report of the inventory with the comptroller.

(b) Not later than the 30th day after the date of the increase, each distributor, wholesaler, and retailer shall pay the amount of the additional tax due because of the tax increase by attaching to the inventory a cashier's check payable to the comptroller, by electronic funds transfer to the comptroller or by any other method of payment authorized by the comptroller.

(c) Each distributor, wholesaler, and retailer shall keep a copy of the inventory and must be able to document the method of payment used.

(d) This section does not affect the date payment is due for stamps of an old design, color, or denomination if payment has not been made for the stamps on or before the effective date of the tax increase.

Acts 1981, 67th Leg., p. 1644, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 2, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 12, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 15, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.31, eff. Sept. 1, 1997.

Sec. 154.060. CANCELLATION. No person may cancel, mark, or mutilate a stamp on a package of cigarettes so that the comptroller is prevented from or hindered in examining the genuineness of the stamp.

Acts 1981, 67th Leg., p. 1644, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 13, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.32, eff. Sept. 1, 1997.

Sec. 154.061. PENALTY FOR FAILURE TO PAY TAX. (a) A distributor who fails to timely pay the tax when due shall pay five percent of the amount of tax then due as a penalty, and if the distributor fails to pay the tax within 30 days after the day on which the tax is due, the distributor shall pay an additional five

percent.

(b) The minimum penalty imposed by this section is \$50.

(c) The dishonor of a check delivered to the treasury for payment of taxes constitutes a failure to pay the tax when due.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 16, eff. June 7, 1991.

#### SUBCHAPTER D. PERMITS

Sec. 154.101. PERMITS. (a) A person may not engage in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer unless the person has applied for and received the applicable permit from the comptroller.

(b) Each distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall obtain a permit for each place of business owned or operated by the distributor, wholesaler, bonded agent, manufacturer, importer, or retailer.

(c) The comptroller shall prescribe the form and content of an application for a permit and shall furnish the form on request of an applicant.

(d) The applicant shall accurately complete all information required by the application and provide the comptroller with such additional information as the comptroller deems necessary.

(e) The comptroller may require each corporation, association, joint venture, syndicate, partnership, or proprietorship to furnish financial information regarding the applicant and to provide the identity of each officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, member, owner, or managing employee.

(f) Each distributor, wholesaler, and retailer that applies for a permit to sell cigarettes from a vehicle must provide the make, model, vehicle identification number, registration number, and any other information required by the comptroller.

(g) All financial information provided under this section is confidential and not subject to Chapter 552, Government Code.

(h) Permits for engaging in business as a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer shall be governed exclusively by the provisions of this code.

Acts 1981, 67th Leg., p. 1645, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 3, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 14, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 17, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1000, Sec. 39, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 47, eff. Oct. 1, 2001.

Sec. 154.1015. SALES; PERMIT HOLDERS AND NONPERMIT HOLDERS. (a) Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders.

(b) A person who is not a permit holder may not sell or distribute more than 200 individual cigarettes to any person.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 18, eff. June 7, 1991.

Sec. 154.102. COMBINATION PERMIT. (a) The comptroller may issue a combination permit for cigarettes and tobacco products to a person who is a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer as defined by this chapter and Chapter 155 for both cigarettes and tobacco products.

(b) A person who receives a combination permit pays only the higher of the two permit fees.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 19, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 48, eff. Oct. 1, 2001.

Sec. 154.107. DENIAL OF PERMIT. The comptroller may reject an application and deny a permit if the comptroller finds, after notice and opportunity for hearing, any of the following:

(1) the premises where business will be conducted are not adequate to protect the cigarettes or cigarette stamps; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any information required by Sections 154.101(d), (e), and (f), including prior business experience, financial condition of the permit holder, present or previous business affiliations, prior employment, and any conviction of a felony, or has made a false statement in the application; or

(B) has previously violated provisions of this chapter.

Acts 1981, 67th Leg., p. 1646, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 19, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 20, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.35, eff. Sept. 1, 1997.

Sec. 154.110. ISSUANCE OF PERMIT. (a) The comptroller shall issue a permit to a distributor, wholesaler, bonded agent, manufacturer, importer, or retailer if the comptroller:

(1) has received an application and fee, if required;

(2) believes that the applicant has complied with Section 154.101; and

(3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

(b) The permit shall be issued for a designated place of business, except as provided by Section 154.117.

(c) The permits are nonassignable.

(d) The permit must indicate the type of permit that it is and authorize the sale of cigarettes in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or rules of the comptroller are violated.

Acts 1981, 67th Leg., p. 1646, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 7, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 21, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 21, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.36, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 49, eff. Oct. 1, 2001.

Sec. 154.111. PERMIT YEAR; FEES. (a) A permit required by

this chapter expires on the last day of February of each year, except that the retailer's permit required by Section 154.101 expires on the last day of May of each even-numbered year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) \$300 for a bonded agent's permit;

(2) \$300 for a distributor's permit;

(3) \$200 for a wholesaler's permit;

(4) \$15 for each permit for a vehicle if the applicant is also applying for a permit as a bonded agent, distributor, or wholesaler or has received a current permit from the comptroller under Sections 154.101 and 154.110; and

(5) \$180 for a retailer's permit.

(c) Repealed by Acts 1997, 75th Leg., ch. 671, Sec. 4.01, eff. Sept. 1, 1997.

(d) For a new or renewal permit required by Section 154.101, the comptroller shall prorate the fee according to the number of months remaining during the calendar year that the permit is to be in effect.

(e) A person who does not obtain a permit each year in a timely manner must pay a fee of \$50 in addition to the application fee for the permit.

(f) If at the date of issuance a permit will expire within three months, the comptroller may collect the prorated permit fee or the fee for the current year and, with the consent of the permit holder, may collect the fee for the next permit year and issue a permit or permits for both periods, as applicable.

(g) Expired.

Acts 1981, 67th Leg., p. 1647, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 8, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 22, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 21, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 671, Sec. 4.01, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.37, eff. Sept. 1, 1997.

Sec. 154.1135. PAYMENT FOR PERMITS. (a) An applicant for a permit required by Section 154.101 shall send the required fee with

the application.

(b) The payment must be in cash or by money order or check.

(c) A permit may not be issued in exchange for a check until after the comptroller has received full payment on the check.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 22, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.38, eff. Sept. 1, 1997.

Sec. 154.114. FINAL SUSPENSION OR REVOCATION OF A PERMIT.

(a) The comptroller may suspend or revoke a person's permit if the comptroller finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or an administrative rule made under this chapter.

(b) If the comptroller intends to suspend or revoke a permit, the comptroller shall provide the permit holder with written notice that includes a statement:

(1) of the reason for the intended revocation or suspension;

(2) that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation of the permit; and

(3) of the date, time, and place of the hearing.

(c) The comptroller shall deliver the written notice by personal service or by mail to the permit holder's mailing address as it appears on the comptroller's records. Service by mail is complete when the notice is deposited with the U.S. Postal Service.

(d) The comptroller shall give the permit holder not less than 10 days' notice of a final hearing.

(e) A permit holder may appeal the decision of the comptroller to a district court in Travis County not later than the 30th day after the date the comptroller's decision becomes final.

(f) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(g) If the comptroller suspends or revokes a permit, the comptroller shall provide written notice of the suspension or

revocation, within a reasonable time, to each distributor and wholesaler permit holder in the state. A distributor or wholesaler permit holder violates Section [154.1015\(a\)](#) by selling or distributing cigarettes to a person whose permit has been suspended or revoked only after the distributor or wholesaler permit holder receives written notice of the suspension or revocation from the comptroller.

Acts 1981, 67th Leg., p. 1647, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 9, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 25, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 23, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 40, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.39, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.39, eff. Oct. 1, 1999.

Sec. 154.1141. SUMMARY SUSPENSION OF A PERMIT. (a) The comptroller may suspend a person's permit without notice or a hearing for the person's failure to comply with this chapter or a rule adopted under this chapter if the person's continued operation constitutes an immediate and substantial threat to the collection of taxes imposed by this chapter and attributable to the person's operation.

(b) If the comptroller summarily suspends a person's permit, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than 10 days after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter [2001](#), Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a person's permit, the comptroller shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of

the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer, employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the comptroller's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If the notice is served in person, the permit holder shall immediately surrender the permit to the comptroller or the comptroller's representative. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller.

(f) Section 154.114, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing under this section.

Added by Acts 1995, 74th Leg., ch. 1000, Sec. 41, eff. Oct. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.40, eff. Sept. 1, 1997.

Sec. 154.1142. DISCIPLINARY ACTION FOR CERTAIN VIOLATIONS.

(a) A retailer is subject to disciplinary action as provided by this section if:

(1) an agent or employee of the retailer commits an offense under Subchapter H, Chapter 161, Health and Safety Code; and

(2) the retailer, with criminal negligence, failed to prevent the offense through adequate supervision and training of the agent or employee.

(b) If the comptroller finds, after notice and an opportunity for a hearing as provided by this subchapter, that a permit holder has violated Subchapter H or K, Chapter 161, Health and Safety Code, at a place of business for which a permit is issued, the comptroller may suspend the permit for that place of business or administratively assess a fine as follows:

(1) if the permit holder has not been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business during the preceding 12 months, the

comptroller may require the permit holder to pay a fine in an amount not to exceed \$500;

(2) if the permit holder has been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business once during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$750; and

(3) if the permit holder has been found to have violated Subchapter H or K, Chapter 161, Health and Safety Code, at that place of business at least twice during the preceding 12 months, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$1,000 or suspend the permit for that place of business for not more than three days.

(c) Except as provided by Section 154.1143, if the permit holder has been found to have violated Section 161.082(b), Health and Safety Code, on four or more previous and separate occasions at the same place of business during the preceding 12 months, the comptroller shall revoke the permit.

(d) A retailer whose permit has been revoked under this section may not apply for a retailer's permit for the same place of business before the expiration of six months after the effective date of the revocation.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 4.03, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.1143. ACTIONS OF EMPLOYEE. (a) For purposes of Subchapter H, Chapter 161, Health and Safety Code, and the provisions of this code relating to the sale or delivery of cigarettes or tobacco products to a minor, the comptroller may suspend a permit but may not revoke the permit under Section 154.1142(c) if the comptroller finds that:

(1) the employer has not violated Section 161.082(b), Health and Safety Code, more than seven times at the place of business for which the permit is issued in the 24-month period preceding the violation in question;

(2) the employer requires its employees to attend a

comptroller-approved seller training program;

(3) the employee has actually attended a comptroller-approved seller training program; and

(4) the employer has not directly or indirectly encouraged the employee to violate the law.

(b) The comptroller shall adopt rules or policies establishing the minimum requirements for approved seller training programs. On application, the comptroller shall approve seller training programs meeting the requirements that are sponsored privately or by public community colleges. The comptroller may charge an application fee in an amount necessary to defray the expense of processing the application.

(c) The comptroller may approve under this section a seller training program sponsored by a permit holder for the purpose of training its employees without regard to whether the employees are located at the same place of business. This subsection applies only to a permit holder who employs at least 100 persons at any one time during the permit year who sell cigarettes or tobacco products.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 4.04, eff. Sept. 1, 1997.

Sec. 154.1145. HEARINGS. Unless otherwise provided by this chapter, the comptroller shall conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code. The comptroller may designate one or more representatives to conduct the hearings and may prescribe the rules of procedure governing the hearings.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 24, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1000, Sec. 42, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.41, eff. Sept. 1, 1997.

Sec. 154.116. COMPTROLLER MAY REFUSE TO SELL STAMPS. The comptroller may refuse to sell stamps to a person who has not obtained a distributor's permit or to a distributor who does not have a valid permit.

Acts 1981, 67th Leg., p. 1648, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.42, eff. Sept. 1, 1997.

Sec. 154.117. DISPLAY OF PERMIT. (a) Each permit holder shall keep the permit on public display at the place of business for which the permit was issued.

(b) Each permit holder who has a permit assigned to a vehicle shall post the permit in a conspicuous place on the vehicle.

(c) Each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

Acts 1981, 67th Leg., p. 1648, ch. 389, Sec. 1, eff. Jan. 1, 1982.  
Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 25, eff. June 7, 1991.

Sec. 154.121. REVENUE. (a) Except as provided by Subsection (b), revenue from the sale of permits to distributors, wholesalers, and bonded agents is allocated in the same manner as other revenue allocated by Subchapter J.

(b) Revenue from the sale of retailer's permits shall be deposited to the general revenue fund and may be appropriated only as provided by this section. The money may be appropriated first to the comptroller for administration of licensing of retailers under this chapter or Chapter 155.

(c) If, after any appropriation is made under Subsection (b), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the comptroller for administration and enforcement of Subchapters H, K, and N, Chapter 161, Health and Safety Code, and to the Texas Department of Health, for the administration and enforcement of Section 161.253, Health and Safety Code.

(d) If, after any appropriation is made under Subsections (b) and (c), revenue remains from the sale of retailer's permits, the remaining money may be appropriated to the Texas Department of Health to administer the commissioner of public health's responsibilities under Section 161.301, Health and Safety Code.

(e) If, after any appropriation is made under Subsections (b), (c), and (d), revenue remains from the sale of retailer's

permits, the remaining money may be appropriated to the appropriate entity to administer that entity's responsibilities under Section [161.302](#), Health and Safety Code.

Acts 1981, 67th Leg., p. 1648, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 12, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 25, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 671, Sec. 4.02, eff. Sept. 1, 1997.

#### SUBCHAPTER E. INTERSTATE BUSINESS

Sec. 154.152. INTERSTATE STOCK. (a) A distributor shall set aside unstamped cigarette packages for interstate sale and for which no tax is due under federal law in a separate part of the building from the stamped packages. If the unstamped packages for interstate sale or for which no tax is due under federal law are not stored separately, the cigarettes are subject to the same requirements as cigarettes possessed for the purpose of a first sale in this state.

(b) A distributor who possesses unstamped cigarette packages for interstate sale must possess a number of unused stamps from the appropriate state sufficient to stamp the distributor's inventory of unstamped interstate cigarettes, except for cigarette packages for which no tax is due under federal law. Any unstamped packages of cigarettes that exceed the number of out-of-state stamps on hand shall be presumed to be held for sale in this state, except for cigarette packages for which no tax is due under federal law.

(c) A person may not transport or cause to be transported from this state cigarettes for sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold.

(d) A person may not affix to cigarettes the stamp required by another state or pay any other excise tax on the cigarettes imposed by another state if the other state prohibits stamps from being affixed to the cigarettes, prohibits the payment of any other

excise tax on the cigarettes, or prohibits the sale of the cigarettes.

(e) Not later than the 15th day after the end of each calendar quarter, a person who transports or causes to be transported from this state cigarettes for sale in another state shall submit to the attorney general a report identifying:

(1) the quantity of cigarettes, by brand style, transported or caused to be transported in the preceding calendar quarter; and

(2) the name and address of each recipient of the cigarettes.

Acts 1981, 67th Leg., p. 1649, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 29, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 26, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1141, Sec. 1, eff. June 20, 2003.

#### SUBCHAPTER F. RECORDS AND REPORTS

Sec. 154.201. RECORD OF PURCHASE OR RECEIPT. Each distributor, wholesaler, bonded agent, and export warehouse shall keep records at each place of business of all cigarettes purchased or received, including records of those cigarettes for which no tax is due under federal law. Each retailer shall keep records at a single location, which the retailer shall designate as its principal place of business in this state, of all cigarettes purchased and received. These records must include:

(1) the name and address of the shipper or carrier and the mode of transportation;

(2) all shipping records or copies of records, including invoices, bills of lading, waybills, freight bills, and express receipts;

(3) the date and the name of the place of origin of the cigarette shipment;

(4) the date and the name of the place of arrival of the cigarette shipment;

(5) a statement of the number, kind, and price paid for cigarettes, including cigarettes in stamped and unstamped

packages;

(6) the name, address, permit number, and tax identification number of the seller;

(7) in the case of a distributor, copies of the customs certificates required by 19 U.S.C. Section 1681a(c), as amended, for all cigarettes imported into the United States to which the distributor has affixed a tax stamp; and

(8) any other information required by rules of the comptroller.

Acts 1981, 67th Leg., p. 1649, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 13, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 27, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 43, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.43, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1104, Sec. 3, eff. Sept. 1, 2001.

Sec. 154.202. RECORD OF STAMPS. (a) A distributor shall keep at each place of business in this state the invoices for all stamps purchased or received from the comptroller and records providing complete information on stamps purchased and the disposition of the stamps.

(b) The records must show:

(1) the date of receipt of stamps purchased;

(2) the beginning and ending serial numbers and the quantity of stamps purchased;

(3) the design, color, or denomination of stamps purchased;

(4) the amount paid for the stamps;

(5) if stamps were sold under Section [154.044](#), the name of the purchaser, the beginning and ending numbers and quantity of stamps purchased, and the design, color, or denomination and amount paid for the stamps;

(6) the beginning and ending serial numbers and quantity, design, color, or denomination of and amount paid for stamps sent to or received from the comptroller as an exchange; and

(7) the inventory of stamps on hand on the first day of each month, showing the beginning and ending serial numbers and

quantity, design, color, or denomination of, and amount paid for, the stamps.

Acts 1981, 67th Leg., p. 1650, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 27, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.44, eff. Sept. 1, 1997.

Sec. 154.203. REPORT OF SALE OR USE. (a) Each distributor and wholesaler shall keep at each place of business in this state records of each sale, distribution, exchange, or use of cigarettes whether taxed under this chapter or not. Each distributor and wholesaler shall prepare and retain an original invoice for each transaction involving cigarettes. Each distributor or wholesaler shall keep any supporting documentation, including bills of lading, showing shipment and receipt used in preparing the invoices at the place of business of the distributor or wholesaler. The distributor or wholesaler shall prepare and deliver a duplicate invoice to the purchaser.

(b) The records for each sale, distribution, exchange, or use of cigarettes must show:

(1) the purchaser's name and address, permit number, or tax identification number;

(2) the method of delivery and the name of the common carrier or other person delivering the cigarettes;

(3) the date, number, and kind of cigarettes in stamped packages sold, distributed, exchanged, or used; and

(4) the date, number, and kind of cigarettes in unstamped packages sold, distributed, exchanged, or used.

Acts 1981, 67th Leg., p. 1650, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 27, eff. June 7, 1991.

Sec. 154.204. MANUFACTURER'S RECORDS AND REPORTS. (a) A manufacturer who sells cigarettes to a permit holder in this state shall keep records showing:

(1) the number and kind of cigarettes in unstamped packages sold;

(2) the number and kind of cigarettes in stamped packages sold, if any;

(3) the date the cigarettes were sold;

(4) the manufacturer's list price for the cigarettes;

(5) the account number and the location where the cigarettes were shipped, if any; and

(6) the name of the common carrier.

(b) A manufacturer who sells cigarettes to a permit holder in this state shall file with the comptroller, on or before the end of each month, a report showing the information listed in Subdivisions (1), (2), (3), and (5) of Subsection (a) for the previous month. Information related to the manufacturer's list prices must be submitted by the manufacturer 15 days prior to any scheduled changes.

Acts 1981, 67th Leg., p. 1651, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 27, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.45, eff. Sept. 1, 1997.

Sec. 154.205. MANUFACTURER'S REPRESENTATIVE'S RECORDS. A manufacturer's representative shall retain copies of the invoices prepared for each purchase or sale of cigarettes from or to a permittee of the state. The manufacturer's representative shall deliver a copy of the invoice prepared for each sale of cigarettes to the purchaser or recipient of the cigarettes. Such records shall be available for inspection and copying by the comptroller and attorney general for four years.

Acts 1981, 67th Leg., p. 1651, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 27, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.46, eff. Sept. 1, 1997.

Sec. 154.207. COMMON CARRIER RECORDS. (a) Each common carrier shall keep records of cigarettes transported in this state.

(b) The comptroller and the attorney general are entitled to access during regular business hours to all records pertaining to cigarettes that are transported.

(c) The records must show for each transaction:

- (1) the name and address of the consignor and consignee;
- (2) the date of delivery; and
- (3) the amount and type of cigarettes transported or handled.

Acts 1981, 67th Leg., p. 1651, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 31, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 28, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.47, eff. Sept. 1, 1997.

Sec. 154.208. BONDED AGENT'S RECORDS. (a) Each bonded agent shall keep, at each place of business in this state, records of all cigarettes received, distributed, and delivered.

(b) The records must include:

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

Acts 1981, 67th Leg., p. 1651, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 28, eff. June 7, 1991.

Sec. 154.209. AVAILABILITY OF RECORDS. (a) Except as provided by Section [111.0041](#), each permit holder shall keep records available for inspection and copying by the comptroller and the attorney general for at least four years.

(b) If a permit holder's place of business is a vehicle or vending machine, the permit holder shall designate in the application for a permit a permanent place of business to keep the records. The permit holder shall keep the records in the designated place.

(c) Each permit holder who is required to keep records under this chapter shall provide the comptroller with copies of the records on demand.

Acts 1981, 67th Leg., p. 1652, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 15, eff. March 1,

1986; Acts 1989, 71st Leg., ch. 240, Sec. 32, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 28, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.48, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 540, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 4.08, eff. October 1, 2011.

This section was amended by the 85th Legislature. Pending publication of the current statutes, see S.B. 1390, 85th Legislature, Regular Session, for amendments affecting this section.

Sec. 154.210. DISTRIBUTOR'S REPORT. (a) A distributor shall deliver to the comptroller, on or before the last day of each month, a report for the preceding month.

(b) The report must show:

- (1) the date the report was made;
- (2) the distributor's name and address;
- (3) the month the report covers;
- (4) the number of cigarettes in stamped packages and the number of cigarettes in unstamped packages on hand at the beginning of the month;
- (5) the number of cigarettes in stamped packages and the number of cigarettes in unstamped packages purchased and received during the month;
- (6) the number of cigarettes in stamped packages and the number of cigarettes in unstamped packages returned by customers or received from any other source;
- (7) the number of cigarettes in stamped packages and the number of cigarettes in unstamped packages sold, used, lost, stolen, returned to the factory, or disposed of in any other manner;
- (8) the number of cigarettes in stamped packages and the number of cigarettes in unstamped packages on hand at the end of the month;
- (9) the number of cigarettes sold or distributed in interstate commerce;
- (10) the number of cigarettes sold or distributed in

intrastate commerce;

(11) the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, unused stamps on hand at the beginning of the month;

(12) the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, stamps purchased and received;

(13) the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, stamps sold, used, lost, stolen, exchanged, returned, or disposed of in any other manner;

(14) the beginning and ending serial numbers, design, color, or denomination of, and amount paid for, stamps on hand at the end of the month;

(15) a summary schedule, on a form prescribed by the comptroller, identifying each receipt of cigarettes, the date of receipt, the shipper, the invoice number, and the quantity of cigarettes received; and

(16) any other information the comptroller requires relating to cigarettes and to the payment of taxes due on them.

(c) The comptroller shall prescribe the form and content of the report.

Acts 1981, 67th Leg., p. 1652, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 33, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 28, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.49, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.40, eff. Oct. 1, 1999.

Sec. 154.211. FAILURE TO PRODUCE RECORDS. (a) A person's failure to produce the records required by this subchapter or a person's inability to provide other proof of tax payment, on demand by the comptroller, is prima facie evidence that cigarettes possessed by the person were received for the purpose of making a first sale without payment of the tax imposed by this chapter.

(b) This section does not apply to a person who possesses 200 or fewer cigarettes if the person uses the cigarettes and does not sell them or offer them for sale.

(c) This section does not apply to a failure to produce records or provide other proof of tax payment under Subsection (a) if the failure results from an occurrence beyond the person's control.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 29, eff. June 7, 1991.  
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.50, eff. Sept. 1, 1997.

Sec. 154.212. REPORTS BY WHOLESALERS AND DISTRIBUTORS OF CIGARETTES. (a) The comptroller may, when considered necessary by the comptroller for the administration of a tax under this chapter, require each wholesaler or distributor of cigarettes to file with the comptroller a report each month of sales to retailers in this state.

(b) The wholesaler or distributor shall file the report on or before the 25th day of each month. The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(1) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes, including city and zip code;

(2) the taxpayer number assigned by the comptroller to the retailer, if the wholesaler or distributor is in possession of the number;

(3) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes; and

(4) the monthly net sales made to the retailer by the wholesaler or distributor, including the quantity and units of cigarettes in stamped packages sold to the retailer.

(c) Except as provided by this subsection, the wholesaler or distributor shall file the report with the comptroller electronically. The comptroller may establish procedures for allowing an alternative method of filing for a wholesaler or distributor who demonstrates to the comptroller an inability to comply with the electronic reporting requirement. If the comptroller determines that another technological method of filing the report is more efficient than electronic filing, the

comptroller may establish procedures requiring its use by wholesalers and distributors.

(d) Except as provided by Section 111.006, information contained in a report required to be filed by this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 129 (H.B. 11), Sec. 2, eff. September 1, 2007.

#### SUBCHAPTER G. ADMINISTRATION BY COMPTROLLER

Sec. 154.301. COMPLIANCE INVESTIGATION AND RECOVERY OF COSTS. (a) If the comptroller has reason to believe that a person has failed to pay a tax or penalty in the proper manner when due, as required by this chapter, or otherwise failed to comply with this chapter, the comptroller may employ auditors and investigators to determine compliance and any amount due. If the comptroller determines that the person has not paid the tax or penalty or has failed to comply with this chapter, the comptroller may require the person to pay the reasonable expenses incurred for the compliance investigation and audit as an additional penalty.

(b) The comptroller shall deposit funds paid under this section to the credit of the general revenue fund in the treasury to be used for making audits, conducting investigations, or as otherwise appropriated. The comptroller may use other funds available for audits as appropriated by the legislature.

Acts 1981, 67th Leg., p. 1654, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 35, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 30, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 44, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.52, eff. Sept. 1, 1997.

Sec. 154.302. PAYMENT OF DOUBLE AMOUNT. (a) If the comptroller finds that a person has sold unstamped cigarettes, the comptroller may require the person to pay the state through the comptroller a sum equal to twice the amount of stamp tax due.

(b) If the person does not furnish the comptroller evidence

that enough stamps were purchased to cover unstamped cigarettes purchased, it is presumed that the cigarettes were sold without the proper stamps.

Acts 1981, 67th Leg., p. 1654, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 36, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.53, eff. Sept. 1, 1997.

Sec. 154.304. INSPECTION. (a) To determine the tax liability of a person dealing in cigarettes or compliance by the person with this chapter, the comptroller may:

(1) inspect any premises, including a vending machine and its contents, where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary to determine the tax liability or compliance with this chapter;

(3) examine the records required by this chapter or other records, books, documents, papers, accounts, and objects that the comptroller determines are necessary for conducting a complete examination; and

(4) examine stocks of cigarettes and cigarette stamps.

(b) A person dealing in cigarettes may not:

(1) fail to produce, on the comptroller's demand, records required by this chapter; or

(2) hinder or prevent the inspection of records or the examination of the premises.

Acts 1981, 67th Leg., p. 1654, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 38, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 31, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 45, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.54, eff. Sept. 1, 1997.

Sec. 154.305. REFUND FOR STAMPS. (a) The comptroller may provide credit or a refund on stamps that are unfit for sale or use because of damage and on unused stamps in broken or unbroken sheets or rolls if the stamps were properly purchased and paid for by the person requesting the refund.

(b) The comptroller shall make a refund under this section from revenue collected under this chapter before the revenue is allocated under Subchapter J.

Acts 1981, 67th Leg., p. 1655, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 31, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.55, eff. Sept. 1, 1997.

Sec. 154.306. EXCHANGE OF STAMPS. The comptroller may exchange or replace, without cost, stamps affixed to a package of cigarettes if the cigarettes have become unfit for sale, use, or consumption and have been returned to the comptroller or to the manufacturer.

Acts 1981, 67th Leg., p. 1655, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 31, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.56, eff. Sept. 1, 1997.

Sec. 154.307. RECORDS. The comptroller shall keep a record of:

(1) stamps sold by the comptroller or under the comptroller's direction;

(2) stamps exchanged by the comptroller; and

(3) refunds made on stamps purchased.

Acts 1981, 67th Leg., p. 1655, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.57, eff. Sept. 1, 1997.

Sec. 154.308. DEFICIENCY DETERMINATION, PENALTIES, AND INTEREST. (a) If the comptroller has reasonable cause to believe that a tax report or the amount of tax paid is inaccurate, the comptroller may compute and determine the amount of tax, penalty, and interest to be paid from information contained in the report or from any other information available to the comptroller.

(b) On making a deficiency determination, the comptroller shall notify the person by mail or personal service. Service by mail is complete when the notice is deposited with the U.S. Postal

Service.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 32, eff. June 7, 1991.

Amended by Acts 1995, 74th Leg., ch. 1000, Sec. 46, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.58, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.41, eff. Oct. 1, 1999.

Sec. 154.309. REDETERMINATION. (a) A person who receives notice of a deficiency determination may submit a written request to the comptroller for redetermination. If the person desires a hearing, the request for a hearing must be included in the written request for redetermination.

(b) A written request for redetermination must be filed at the office of the comptroller not later than the 30th day after the date notice of deficiency is issued. If a written request for redetermination is not filed as required by this subsection, the determination is final.

(c) On receipt of a written request for redetermination, the comptroller shall:

(1) review the request for redetermination if a hearing was not requested; or

(2) provide the person against whom the deficiency determination was made with written notice of the time, place, and date of a redetermination hearing.

(d) The comptroller shall give notice of a redetermination hearing by personal service or by mail. Service by mail is complete when the notice is deposited with the U.S. Postal Service.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 32, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.59, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.42, eff. Oct. 1, 1999.

#### SUBCHAPTER H. ENFORCEMENT OF TAX

Sec. 154.403. SEIZURE. (a) The comptroller with or without process may seize:

(1) cigarettes taxed under this chapter that are possessed or controlled by a person for the purpose of selling or removing the cigarettes in violation of this chapter;

(2) cigarettes that are removed, deposited, or concealed by a person intending to avoid payment of taxes imposed by this chapter;

(3) an automobile, boat, conveyance, or other type of vehicle used to remove or transport cigarettes by a person intending to avoid payment of taxes imposed by this chapter; and

(4) equipment, paraphernalia, or other tangible personal property used by a person intending to avoid payment of taxes imposed by this chapter found in the place where the cigarettes are found.

(b) An item seized under this section is forfeited to the state and remains in the custody of the comptroller for disposition as provided by this chapter. The seized item is not subject to replevin.

Acts 1981, 67th Leg., p. 1656, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 39, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 33, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.60, eff. Sept. 1, 1997.

Sec. 154.404. COMPTROLLER'S REPORT. (a) If the comptroller seizes property under Section 154.403, the comptroller shall immediately make a written report showing:

- (1) the name of the person making the seizure;
- (2) the place where the property was seized;
- (3) the person from whom the property was seized; and
- (4) an inventory of the property seized.

(b) The comptroller shall prepare the report in duplicate. The person who seized the property shall sign the report. The comptroller shall give the original to the person from whom the property was seized and shall file a duplicate copy open for public inspection in the comptroller's office.

Acts 1981, 67th Leg., p. 1656, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 40, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 34, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.61, eff. Sept. 1, 1997.

Sec. 154.4045. SALE OF SEIZED CIGARETTES. (a) Cigarettes

are perishable items.

(b) If the seized cigarettes are in a salable condition, the comptroller may:

(1) sell the cigarettes, return the cigarettes to the manufacturer for credit, or destroy or dispose of the cigarettes; or

(2) if the seized cigarettes are in packages described by Section 154.0415 or stamped in violation of that section, the comptroller may not sell the cigarettes but may destroy or dispose of the cigarettes or return the cigarettes, solely for the purpose of export, to the manufacturer for credit.

(c) The price obtained at the sale is the market value for the cigarettes sold.

(d) The comptroller shall place the proceeds from the sale of seized cigarettes in escrow in a treasury suspense account pending the outcome of the forfeiture proceeding provided for in this chapter.

(e) If a determination is made that the comptroller wrongfully seized the cigarettes, the person entitled to the cigarettes at the time of seizure may recover the money held in escrow in the treasury suspense account.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 35, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.62, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1539, Sec. 2, eff. Sept. 1, 1999.

Sec. 154.405. FORFEITURE PROCEEDING. (a) The owner of property seized under this chapter is entitled to written notice of the seizure.

(b) The comptroller shall give the notice by certified mail, return receipt requested, not later than the 15th day after the date of seizure and include with the notice an inventory of the property seized and a statement that the owner of property seized is entitled to a hearing on the seizure. Service by mail is complete when the notice is received, as evidenced by return receipt from the U.S. Postal Service.

(c) After providing the notice and a hearing, if a hearing is requested under Subsection (b), the comptroller may order the

forfeiture to the state of any property seized under this chapter or the proceeds of the sale of any cigarettes seized under this chapter if the property was used, controlled, possessed, or concealed for the purpose of violating any provision of this chapter.

(d) The comptroller shall hold property or proceeds forfeited under this section in escrow until the comptroller's determination is final and the period for filing a petition for judicial review has expired.

(e) A forfeiture proceeding under this section is an in rem proceeding.

Acts 1981, 67th Leg., p. 1657, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 41, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 36, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1040, Sec. 44, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.63, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 19, eff. September 1, 2011.

Sec. 154.406. DISPOSITION OF FORFEITED PROPERTY. (a) The comptroller may sell property forfeited to the state at public or private sale in any commercially reasonable manner or retain the property for official use by the comptroller's criminal investigation division. Property retained for use under this subsection may later be sold by the comptroller under this section.

(b) Subject to the provisions of Section 154.413, the comptroller shall deposit the sale proceeds, less expenses of seizure, court costs, and any investigation and audit costs, in the state treasury.

(c) The comptroller shall use the sale proceeds to operate and administer the cigarette tax program up to the amount appropriated by the legislature for this purpose. The comptroller shall allocate any sale proceeds that exceed the legislative appropriation as provided by Subchapter J. Any unused appropriations remain in the general revenue fund.

(d) If an automobile or other vehicle seized under Section 154.403 is forfeited and retained by the comptroller under

Subsection (a), the comptroller is considered the owner under Subtitle A, Title 7, Transportation Code. The Texas Department of Motor Vehicles shall issue a certificate of title for the vehicle to the comptroller. The comptroller may maintain, repair, use, and operate the vehicle with money appropriated for current operations. Acts 1981, 67th Leg., p. 1657, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 36, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.64, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 20, eff. September 1, 2011.

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

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

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

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 21, eff. September 1, 2011.

Sec. 154.409. UNSTAMPED CIGARETTES. If cigarettes seized under Section 154.403 of this code are unstamped, an officer selling the cigarettes shall affix the required stamps to the cigarettes and deduct the cost of the stamps from the sale proceeds. Acts 1981, 67th Leg., p. 1658, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.4095. DECEPTIVE TRADE PRACTICE. Selling a package of cigarettes described by Section 154.0415, with or without a stamp, is a deceptive trade practice for the purpose of Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 1999, 76th Leg., ch. 1539, Sec. 3, eff. Sept. 1, 1999.

Sec. 154.410. SEIZURE OR SALE NO DEFENSE. The seizure, forfeiture, and sale of cigarettes or property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter.

Acts 1981, 67th Leg., p. 1658, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.411. WAIVER PERMITTED. (a) The comptroller may waive a forfeiture proceeding for property seized under Section 154.403 of this code if the owner or possessor of the property:

(1) affixes the required stamp to the individual packages of cigarettes; and

(2) in addition to the value of the stamps required to be affixed, pays to the state through the comptroller a sum equal to the value of the required stamps.

(b) The comptroller may make a compromise with a person before or after a claim is filed in court. The comptroller shall keep a record open for public inspection of compromises and waivers of forfeiture made under this section.

Acts 1981, 67th Leg., p. 1658, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 44, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.65, eff. Sept. 1, 1997.

Sec. 154.412. PAYMENT TO TREASURY. The comptroller shall deposit all taxes collected under Section 154.411, after payment of costs, in the treasury to be allocated as provided by Subchapter J.

Acts 1981, 67th Leg., p. 1658, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 45, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 37, eff. June 7, 1991;

Acts 1997, 75th Leg., ch. 1423, Sec. 19.66, eff. Sept. 1, 1997.

Sec. 154.413. PREFERRED STATE TAX LIEN. (a) All taxes, fines, interest, penalties, and costs due under this chapter are secured by a preferred lien in favor of the state, first and prior to all other existing or future liens, contractual or statutory, legal or equitable, regardless of the time the lien originated, on any property seized and forfeited under this chapter.

(b) A lienholder who establishes an interest in the property is entitled to recover any proceeds remaining after payment of all taxes, fines, interest, penalties, and costs due to the state.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 38, eff. June 7, 1991.

Sec. 154.414. RECIPROCAL AGREEMENTS. (a) The comptroller may enter into a reciprocal agreement with a tax official of another state or an official of the United States allowing the exchange of information received by, recorded by, prepared by, furnished to, or collected by the comptroller with respect to the investigation and enforcement of this chapter for any tax, penalty, interest, fine, forfeiture, or offense.

(b) This section does not permit the exchange of information made confidential by this chapter.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 38, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.67, eff. Sept. 1, 1997.

Sec. 154.415. DONATIONS. The comptroller may accept gifts, grants, and donations for the administration and enforcement of this chapter.

Added by Acts 1989, 71st Leg., ch. 240, Sec. 46, eff. Oct. 1, 1989.

Amended by Acts 1997, 75th Leg., ch. 1040, Sec. 45, Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.68, eff. Sept. 1, 1997.

#### SUBCHAPTER I. PENALTIES

Sec. 154.501. PENALTIES. (a) A person violates this chapter if the person:

(1) is a distributor, wholesaler, manufacturer, importer, bonded agent, manufacturer's representative, or retailer and fails to keep records required by this chapter;

(2) engages in the business of a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer without a valid permit;

(3) is a distributor, wholesaler, manufacturer, importer, bonded agent, or retailer and fails to make a report or makes a false or incomplete report or application required by this chapter to the comptroller; or

(4) is a person affected by this chapter and fails or refuses to abide by or violates a provision of this chapter or a rule adopted by the comptroller under this chapter.

(b) A person who violates this section forfeits and shall pay to the state a penalty of not more than \$2,000 for each violation.

(c) Each day on which a violation occurs is a separate offense.

(d) The attorney general shall bring suits to recover penalties under this section.

(e) A suit under this section may be brought in a court of competent jurisdiction in Travis County or in any court having jurisdiction.

Acts 1981, 67th Leg., p. 1659, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 18, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 47, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 39, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.69, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 50, eff. Oct. 1, 2001.

This section was amended by the 85th Legislature. Pending publication of the current statutes, see S.B. [1390](#), 85th Legislature, Regular Session, for amendments affecting this section.

Sec. 154.502. UNSTAMPED CIGARETTES. A person commits an offense if the person:

(1) makes a first sale of unstamped cigarettes;

(2) sells, offers for sale, or presents as a prize or gift unstamped cigarettes; or

(3) knowingly consumes, uses, or smokes cigarettes taxed under this chapter without a stamp affixed to each individual package.

Acts 1981, 67th Leg., p. 1659, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.5025. AFFIXING STAMPS TO CERTAIN CIGARETTES. A person commits an offense if the person knowingly affixes stamps to cigarettes in violation of Section [154.0415](#).

Added by Acts 1999, 76th Leg., ch. 1539, Sec. 4, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1104, Sec. 4, eff. Sept. 1, 2001.

This section was amended by the 85th Legislature. Pending publication of the current statutes, see S.B. [1390](#), 85th Legislature, Regular Session, for amendments affecting this section.

Sec. 154.503. POSSESSION IN QUANTITIES LESS THAN 10,000.

(a) Except as provided by Section [154.042](#) of this code, a person commits an offense if the person possesses unstamped cigarettes in quantities less than 10,000.

(b) This section does not prohibit transportation of cigarettes by a common carrier.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.504. POSSESSION OF QUANTITIES LESS THAN INDIVIDUAL PACKAGE. A person commits an offense and is subject to a \$100 fine if the person sells cigarettes in quantities less than an individual package containing at least 20 cigarettes.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1997, 75th Leg., ch. 671, Sec. 4.05, eff. Sept. 1, 1997.

Sec. 154.505. CANCELLATION OF STAMP. A person commits an offense if the person knowingly cancels or mutilates, with fraudulent intent or to conceal a violation of this chapter, a stamp

affixed to an individual package of cigarettes.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.506. CONCEALMENT OF A VIOLATION. A person commits an offense if the person uses any artful device or deceptive practice to conceal a violation of this chapter.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.507. MISLEADING THE COMPTROLLER. A person commits an offense if the person misleads the comptroller in the enforcement of this chapter.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 48, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.70, eff. Sept. 1, 1997.

Sec. 154.508. REFUSING TO SURRENDER CIGARETTES. A person commits an offense if the person refuses to surrender to the comptroller on demand cigarettes possessed in violation of this chapter.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 49, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.71, eff. Sept. 1, 1997.

Sec. 154.509. PERMITS. A person commits an offense if the person:

(1) as a distributor, wholesaler, or retailer, receives or possesses cigarettes without having a valid permit;

(2) as a distributor, wholesaler, or retailer, receives or possesses cigarettes without having a permit posted where it can be easily seen by the public;

(3) as a distributor or wholesaler, does not deliver an invoice to the purchaser as required by Section [154.203](#);

(4) as a distributor, wholesaler, or retailer, sells cigarettes without having a valid permit; or

(5) as a bonded agent, stores, distributes, or

delivers cigarettes in unstamped packages without having a valid permit.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 19, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 40, eff. June 7, 1991.

Sec. 154.5095. FINGERPRINTS. The comptroller may refuse to grant a permit or may revoke or suspend a permit if the applicant or permit holder fails, on request, to provide a complete set of fingerprints required for searching the Federal Bureau of Investigation identification division files.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 41, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 790, Sec. 46(20), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.72, eff. Sept. 1, 1997.

Sec. 154.510. MISDEMEANOR. An offense under Sections [154.502](#), [154.503](#), or [154.505](#) through [154.509](#) is a Class A misdemeanor.

Acts 1981, 67th Leg., p. 1660, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 42, eff. June 7, 1991; Acts 1999, 76th Leg., ch. 1155, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.511. TRANSPORTATION OF CIGARETTES. A person, other than a common carrier, commits an offense if the person:

(1) knowingly transports cigarettes without a stamp affixed to each individual package, except as provided by Section [154.024\(a\)](#);

(2) wilfully refuses to stop a motor vehicle operated to transport cigarettes after a request to stop from an authorized person; or

(3) while transporting cigarettes refuses to permit a complete inspection of the cargo by an authorized person.

Acts 1981, 67th Leg., p. 1661, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1999, 76th Leg., ch. 1110, Sec. 2, eff. Sept. 1, 1999.

Sec. 154.512. INSPECTION OF PREMISES. A person commits an offense if the person refuses to permit a complete inspection by an authorized representative of the comptroller of any premises where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange, or fails to produce, on the comptroller's demand, records required by this chapter.

Acts 1981, 67th Leg., p. 1661, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 43, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.73, eff. Sept. 1, 1997.

Sec. 154.513. PREVIOUSLY USED OR OLD DESIGN STAMPS. A person commits an offense if the person:

(1) uses, sells, offers for sale, or possesses for use or sale previously used stamps;

(2) attaches or causes to be attached a previously used stamp to an individual package of cigarettes;

(3) uses or consents to the use of previously used stamps in connection with the sale or offering for sale of cigarettes; or

(4) sells, offers for sale, or possesses stamps of an old design more than 60 days after the date of issue of a new design of stamps.

Acts 1981, 67th Leg., p. 1661, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.514. SALE OF STAMPS. A person commits an offense if the person, without having the requisition from the comptroller as provided by Section [154.044](#) of this code:

(1) purchases stamps from a person other than the comptroller; or

(2) sells lawfully issued stamps to a person other than the comptroller.

Acts 1981, 67th Leg., p. 1661, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 50, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.74, eff. Sept. 1, 1997.

This section was amended by the 85th Legislature. Pending publication of the current statutes, see S.B. 1390, 85th Legislature, Regular Session, for amendments affecting this section.

Sec. 154.515. POSSESSION IN QUANTITIES OF 10,000 OR MORE.

(a) Except as provided by Section 154.042 of this code, a person commits an offense if the person possesses unstamped cigarettes in quantities of 10,000 or more.

(b) This section does not prohibit transportation of cigarettes by a common carrier.

Acts 1981, 67th Leg., p. 1661, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.516. BOOKS AND RECORDS. A person commits an offense if the person:

(1) knowingly makes, delivers to, and files with the comptroller a false return or report or an incomplete return or report;

(2) knowingly fails to make and deliver to the comptroller a return or report as required by this chapter;

(3) destroys, mutilates, or conceals a book or record required by this chapter;

(4) refuses to permit the attorney general or the comptroller to inspect and audit books and records that are required by this chapter or that are incidental to the conduct of the cigarette business;

(5) knowingly makes a false entry or fails to make entries in the books and records as required by this chapter; or

(6) fails to keep books and records for four years as required by this chapter.

Acts 1981, 67th Leg., p. 1661, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1985, 69th Leg., ch. 58, Sec. 20, eff. March 1,

1986; Acts 1989, 71st Leg., ch. 240, Sec. 51, eff. Oct. 1, 1989;

Acts 1991, 72nd Leg., ch. 409, Sec. 44, eff. June 7, 1991; Acts

1997, 75th Leg., ch. 1423, Sec. 19.75, eff. Sept. 1, 1997.

Sec. 154.517. FELONY. An offense under Sections 154.511 through 154.516 is a felony of the third degree.

Acts 1981, 67th Leg., p. 1662, ch. 389, Sec. 1, eff. Jan. 1, 1982.  
Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 44, eff. June 7,  
1991.

Sec. 154.518. OVERLAP OF PENALTIES. If an offense is punishable under Section 154.510 of this code and also under Section 154.517 of this code, the punishment prescribed by Section 154.517 of this code controls.

Acts 1981, 67th Leg., p. 1662, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.519. VENUE. Venue of a prosecution for an offense punishable under Section 154.510 or 154.517 of this code is in Travis County or in the county where the offense occurred.

Acts 1981, 67th Leg., p. 1662, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 154.520. COUNTERFEIT STAMPS. (a) A person commits an offense if the person:

(1) prints, engraves, makes, issues, sells, or circulates counterfeit stamps;

(2) possesses with intent to use, sell, circulate, or pass a counterfeit stamp;

(3) uses or consents to the use of a counterfeit stamp in the sale or offering for sale of cigarettes; or

(4) places or causes to be placed a counterfeit stamp on an individual package of cigarettes.

(b) An offense under this section is a felony punishable by confinement in the Texas Department of Criminal Justice for not less than 2 years nor more than 20 years.

(c) Venue of a prosecution under this section is in Travis County.

Acts 1981, 67th Leg., p. 1662, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.154, eff. September 1, 2009.

#### SUBCHAPTER J. NATURE OF TAX AND DISPOSITION OF FUNDS

Sec. 154.601. NATURE OF TAX. (a) The tax imposed by this chapter is not an occupation tax.

(b) If a court of competent jurisdiction declares the tax imposed by this chapter to be an occupation tax:

(1) the legislature intends that the holding not affect the validity of the remaining provisions of this chapter; and

(2) the net revenue is allocated to the general revenue fund, except that one-fourth of the net revenue shall be transferred from the general revenue fund to the available school fund.

(c) A tax imposed by this chapter is in lieu of any other occupation or excise tax imposed by the state or a political subdivision of the state on cigarettes.

Acts 1981, 67th Leg., p. 1663, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2777, ch. 752, Sec. 9(d), eff. Jan. 1, 1982.

Sec. 154.602. FUNDS FOR ENFORCEMENT. The legislature may appropriate money from the cigarette tax to the comptroller for manufacturing and printing of cigarette tax stamps and for the administration of the duties of the comptroller under this chapter. Amounts appropriated under this subsection shall be taken from revenue received from the cigarette tax before the revenue is allocated under Section 154.603 of this code to the funds specified by that section and shall be deposited to the credit of the treasury fiscal agency fund.

Acts 1981, 67th Leg., p. 1663, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2776, ch. 752, Sec. 9(c), eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 418, Sec. 1, eff. June 17, 1987; Acts 1989, 71st Leg., ch. 290, Sec. 52, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.76, eff. Sept. 1, 1997.

Sec. 154.603. DISPOSITION OF REVENUE. (a) After the deductions for the purposes provided by Section 154.602 of this code, the revenue remaining of the first \$2 of tax received per 1,000 cigarettes for cigarettes weighing three pounds or less per

thousand and the first \$4.10 per 1,000 cigarettes of the tax received for cigarettes weighing more than three pounds per thousand is allocated:

- (1) 18.75 percent to the foundation school fund; and
- (2) 81.25 percent to the general revenue fund.

(b) The revenue remaining after the deductions for the purposes provided by Section 154.602 of this code and allocation under Subsection (a) of this section is allocated to the general revenue fund.

(c), (d) Repealed by Acts 1993, 73rd Leg., ch. 679, Sec. 68, eff. Sept. 1, 1993.

Acts 1981, 67th Leg., p. 1663, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2776, ch. 752, Sec. 9(b), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 2025, ch. 367, Sec. 6, eff. Sept. 1, 1985; Acts 1984, 68th Leg., 2nd C.S., ch. 28, art. II, part B, Sec. 3, eff. Sept. 1, 1984; Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 2, Sec. 3, eff. Oct. 2, 1984; Sec. 4, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 69, art. 9, Sec. 3, eff. Sept. 1, 1986; Sec. 4, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 418, Sec. 2, eff. June 17, 1987; Acts 1989, 71st Leg., ch. 240, Sec. 53, eff. Oct. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 66, 68, eff. Sept. 1, 1993.

Sec. 154.6035. ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND. Notwithstanding Section 154.603, all proceeds from the collection of taxes imposed by this chapter attributable to the portion of the tax rate in excess of \$20.50 per thousand on cigarettes, regardless of weight, shall be deposited to the credit of the property tax relief fund under Section 403.109, Government Code.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 3 (H.B. 2), Sec. 4(a), eff. September 1, 2006.