

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 155. CIGARS AND TOBACCO PRODUCTS TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 155.001. 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 cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the person outside this state.

(2) "Cigar" means a roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(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 tobacco products for personal consumption.

(6) "Distributor" means a person who:

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

(B) manufactures or produces tobacco products;
or

(C) is an importer or import broker.

(7) "Export warehouse" means a person in this state who receives tobacco products from manufacturers and stores the

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

(8) "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 tobacco products in intrastate commerce;

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

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

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

(10) "Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

(11) "Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

(12) "Permit holder" means a bonded agent, distributor, wholesaler, manufacturer, importer, or retailer required to obtain a permit under Section [155.041](#).

(13) "Place of business" means:

(A) a commercial business location where tobacco products are sold;

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

(C) a vehicle from which tobacco products are sold.

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

(15) "Tobacco product" means:

(A) a cigar;

(B) smoking tobacco, including granulated,

plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;

(C) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;

(D) snuff or other preparations of pulverized tobacco; or

(E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

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

Acts 1981, 67th Leg., p. 1666, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 2, Sec. 7, eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 58, Sec. 21, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 45, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 705, Sec. 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.263, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1040, Sec. 46, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 540, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 51, eff. Oct. 1, 2001.

Sec. 155.002. STORAGE. (a) The commercial business location where tobacco products are stored or kept cannot be a residence or a unit in a public storage facility.

(b) This section does not apply to a manufacturer's representative.

Added by Acts 2001, 77th Leg., ch. 540, Sec. 5, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 209, Sec. 27, eff. Oct. 1, 2003.

SUBCHAPTER B. IMPOSITION AND RATE OF TAX

Sec. 155.021. TAX IMPOSED ON CIGARS. (a) A tax is imposed and becomes due and payable when a permit holder receives cigars for the purpose of making a first sale in this state.

(b) The tax rates are:

(1) one cent per 10 or fraction of 10 on cigars

weighing three pounds or less per thousand;

(2) \$7.50 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

and

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(3) \$11 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain no substantial amount of nontobacco ingredients; and

(4) \$15 per thousand on cigars that:

(A) weigh more than three pounds per thousand;

(B) sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each; and

(C) contain a substantial amount of nontobacco ingredients.

(c) Cigars taxed under Subsections (b)(3) and (b)(4) of this section are presumed to contain a substantial amount of nontobacco ingredients unless the report on the cigars required by Section [155.111](#) of this code is accompanied by an affidavit stating that specific cigars described in the report do not contain sheet wrapper, sheet binder, or sheet filler. If the manufacturer prepares the report, the manufacturer shall make the affidavit. If the distributor prepares the report, the manufacturer and the distributor shall make the affidavit.

Acts 1981, 67th Leg., p. 1667, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 2, Sec. 5, eff. Oct. 2, 1984; Acts 1991, 72nd Leg., ch. 409, Sec. 46, eff. June 7, 1991.

Sec. 155.0211. TAX IMPOSED ON TOBACCO PRODUCTS OTHER THAN CIGARS. (a) A tax is imposed and becomes due and payable when a

permit holder receives tobacco products other than cigars, for the purpose of making a first sale in this state.

(b) Except as provided by Subsection (c), the tax rate for each can or package of a tobacco product other than cigars is \$1.22 per ounce and a proportionate rate on all fractional parts of an ounce.

(c) The tax imposed on a can or package of a tobacco product other than cigars that weighs less than 1.2 ounces is equal to the amount of the tax imposed on a can or package of a tobacco product that weighs 1.2 ounces.

(d) The computation of the tax under this section and the applicability of Subsection (c) shall be based on the net weight as listed by the manufacturer. The total tax to be imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed by this section on each individual can or package intended for sale or distribution at retail.

(e) A change in the tax rate in effect for a state fiscal year that occurs in accordance with this section does not affect taxes imposed before that fiscal year, and the rate in effect when those taxes were imposed continues in effect for purposes of the liability for and collection of those taxes.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 2, Sec. 6, eff. Oct. 2, 1984. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 4, Sec. 2; Acts 1990, 71st Leg., 6th C.S., ch. 5, Sec. 2.02, eff. July 1, 1990; Acts 1991, 72nd Leg., ch. 409, Sec. 47, eff. June 7, 1991.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 7 (H.B. 5), Sec. 2, eff. January 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. 2154), Sec. 10, eff. September 1, 2009.

Sec. 155.022. FIRST SALE OF TOBACCO PRODUCTS. A person who receives or possesses tobacco products on which a tax of more than \$50 would be due if the receipt or possession were for the purpose of making a first sale in this state is presumed to receive or possess the tobacco products for the purpose of making a first sale

in this state. This presumption does not apply to common carriers or to manufacturers. A tax is imposed on manufacturers who manufacture tobacco products in this state at the time the tobacco products are first transferred in connection with a purchase, sale, or any exchange for value in intrastate commerce. The distribution or delivery of tobacco products by a bonded agent to a permitted distributor in this state, under instructions received from outside this state, is not a first sale.

Acts 1981, 67th Leg., p. 1668, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 47, eff. June 7, 1991.

Sec. 155.023. PAYMENT OF TAX. (a) A distributor shall pay the tax on tobacco products received for the purpose of making a first sale at the time the distributor files the report required by Section 155.111. A distributor shall pay the tax by 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.

(b) The person in possession of tobacco products has the burden to prove payment of the tax on the products.

Acts 1981, 67th Leg., p. 1668, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 47, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.77, eff. Sept. 1, 1997.

Sec. 155.024. EXCEPTION FOR PERSONAL USE. A person who personally transports cigars or tobacco products in quantities or amounts that would ordinarily retail at 25 cents or less is not required to pay the tax imposed by this chapter if the person uses the cigars or tobacco products and does not sell them or offer them for sale.

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

Sec. 155.026. 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 on or before the 30th day 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.

Acts 1981, 67th Leg., p. 1669, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1983, 68th Leg., p. 451, ch. 93, Sec. 3, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 409, Sec. 47, eff. June 7, 1991.

Sec. 155.027. VENUE. Venue of a suit for collection of a penalty for late payment of taxes is in Travis County.

Acts 1981, 67th Leg., p. 1669, ch. 389, Sec. 1, eff. Jan. 1, 1982.

SUBCHAPTER C. PERMITS

Sec. 155.041. 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 additional information the comptroller considers 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 tobacco products 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. 1669, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 23, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 54, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 48, 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. 47, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.78, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 52, eff. Oct. 1, 2001.

Sec. 155.0415. SALES: PERMIT HOLDERS AND NONPERMIT HOLDERS. (a) Except for retail sales to consumers, tobacco products 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 tobacco products on which a tax of more than \$50 has been paid or is due.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 49, eff. June 7, 1991.

Sec. 155.045. COMBINATION PERMIT. The comptroller may issue a combination permit for cigarettes and tobacco products under Section 154.102. A person who receives a combination permit is subject to the provisions of this chapter in the same manner as a person holding a single permit under this chapter.

Acts 1981, 67th Leg., p. 1670, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 24, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 58, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.79, eff. Sept. 1, 1997.

Sec. 155.048. ISSUANCE OF PERMITS. (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) does not reject the application and deny the permit under Section 155.0481; 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 155.053.

(c) The permits are nonassignable.

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

Acts 1981, 67th Leg., p. 1670, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 26, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 61, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.80, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 53, eff. Oct. 1, 2001.

Sec. 155.0481. 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 tobacco products; 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 155.041(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.

Added by Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.81, eff. Sept. 1, 1997.

Sec. 155.049. LICENSING YEAR; FEES. (a) A permit required by this chapter expires on the last day of February of each year, except the retailer's permit required by Section 155.041 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 155.041 and 155.048; and

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

(c) Repealed by Acts 1997, 75th Leg., ch. 671, Sec. 4.06(b), eff. Sept. 1, 1997.

(d) For a new or renewal permit required by Section 155.041, 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 late 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 a 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. 1670, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 27, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 62, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 671, Sec. 4.06, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.82, eff. Sept. 1, 1997.

Sec. 155.050. PAYMENT FOR PERMITS. (a) An applicant for a permit required by Section 155.041 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.

Acts 1981, 67th Leg., p. 1671, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 63, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.83, eff. Sept. 1, 1997.

Sec. 155.053. 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 vending machine that includes tobacco products shall place a retailer's permit on the machine.

Acts 1981, 67th Leg., p. 1671, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 29, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991.

Sec. 155.058. 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 that other revenue is allocated by Subchapter H.

(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 154.

(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. 1672, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 33, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 671, Sec. 4.07, eff. Sept. 1, 1997.

Sec. 155.059. FINAL SUSPENSION OR REVOCATION OF PERMIT.

(a) The comptroller may revoke or suspend 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; 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 in the comptroller's records. Service by mail is complete when the notice is deposited with the United States 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 tobacco products 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 permit holder in the state. A permit holder violates Section 155.0415(a) by selling or distributing tobacco products to a person whose permit has been suspended or revoked only after the permit holder receives written notice of the suspension or revocation from the comptroller.

Acts 1981, 67th Leg., p. 1672, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 34, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 67, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 50, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 48, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.84, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.43, eff. Oct. 1, 1999.

Sec. 155.0591. 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 notice is served in person, the permit holder shall immediately surrender the permit to the comptroller. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller.

(f) Section 155.059, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing.

Added by Acts 1995, 74th Leg., ch. 1000, Sec. 49, eff. Oct. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.85, eff. Sept. 1, 1997.

Sec. 155.0592. 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 155.0593, 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. 4.08, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1157, Sec. 2, eff. Sept.

1, 1999.

Sec. 155.0593. 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 155.0592 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. 4.09, eff. Sept. 1, 1997.

Sec. 155.0595. 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. 50, 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. 50, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.86, eff. Sept. 1, 1997.

SUBCHAPTER D. RECORDS AND REPORTS

Sec. 155.101. RECORD OF PURCHASE OR RECEIPT. Each distributor, wholesaler, bonded agent, and export warehouse shall keep records at each place of business of all tobacco products purchased or received. Each retailer shall keep records at a single location, which the retailer shall designate as its principal place of business in the state, of all tobacco products purchased and received. These records must include the following, except that Subdivision (7) applies to distributors only and Subdivision (8) applies only to the purchase or receipt of tobacco products other than cigars:

(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 tobacco product shipment;

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

(5) a statement of the number, kind, and price paid for the tobacco products;

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

(7) the manufacturer's list price for the tobacco products;

(8) the net weight as listed by the manufacturer for each unit; and

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

Acts 1981, 67th Leg., p. 1674, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 35, eff. March 1, 1986; Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 51, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1040, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.87, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. [2154](#)), Sec. 11, eff. September 1, 2009.

Sec. 155.102. 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 tobacco products whether taxed under this chapter or not. Each distributor and wholesaler shall prepare and retain an original invoice for each transaction involving tobacco products. 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 tobacco products 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 tobacco products;
- (3) the date, amount, and type of tobacco products sold, distributed, exchanged, or used;
- (4) the price received for the tobacco products;
- (5) the number and kind of tobacco products on which the tax has been paid; and
- (6) for sales from a manufacturer to a distributor, the manufacturer's list price for the tobacco products.

(c) In addition to the information required under

Subsection (b), the records for each sale, distribution, exchange, or use of tobacco products other than cigars must show the net weight as listed by the manufacturer for each unit.

Acts 1981, 67th Leg., p. 1674, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1040, Sec. 48, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. [2154](#)), Sec. 12, eff. September 1, 2009.

Sec. 155.103. MANUFACTURER'S RECORDS AND REPORTS. (a) A manufacturer who sells tobacco products to a permit holder in this state shall keep records showing:

- (1) the number and kind of tobacco products sold;
 - (2) the date the tobacco products were sold;
 - (3) the name and permit number of the permit holder;
 - (4) the manufacturer's list price for the tobacco products;
 - (5) the place where the tobacco products were shipped;
- and
- (6) the name of the common carrier.

(a-1) In addition to the information required under Subsection (a), the records for each sale of tobacco products other than cigars must show the net weight as listed by the manufacturer for each unit.

(b) A manufacturer who sells tobacco products to a permit holder in this state shall file with the comptroller, on or before the last day of each month, a report showing the information required to be listed by Subsections (a) and (a-1), if applicable, for the previous month.

Acts 1981, 67th Leg., p. 1675, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.88, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.44, eff. Oct. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. [2154](#)), Sec. 13, eff. September 1, 2009.

Sec. 155.104. MANUFACTURER'S REPRESENTATIVE'S RECORDS. A manufacturer's representative shall keep the same records that are required of a wholesaler. The manufacturer's representative shall deliver a duplicate of the invoice required by Section 155.102 to the purchaser or recipient of the tobacco products.

Acts 1981, 67th Leg., p. 1675, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991.

Sec. 155.105. REPORTS BY WHOLESALERS AND DISTRIBUTORS OF CIGARS AND TOBACCO PRODUCTS. (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 cigars and tobacco products 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 cigars or tobacco products, including the 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 tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products; and

(4) the monthly net sales made to the retailer by the wholesaler or distributor, including:

(A) the quantity and units of cigars and tobacco products sold to the retailer; and

(B) for each unit of tobacco products other than cigars, the net weight as listed by the manufacturer.

(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. 3, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. 2154), Sec. 14, eff. September 1, 2009.

Sec. 155.107. COMMON CARRIER RECORDS. (a) Each common carrier shall keep records of tobacco products transported in this state.

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

(c) The records must show for each transaction:

(1) the names and addresses of the consignor and consignee;

(2) the date of delivery; and

(3) the amount and type of tobacco products transported or handled.

Acts 1981, 67th Leg., p. 1670, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 72, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.89, eff. Sept. 1, 1997.

Sec. 155.108. BONDED AGENT'S RECORDS. (a) Each bonded

agent shall keep, at each place of business in this state, records of all tobacco products 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. 1676, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991.

Sec. 155.110. 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. 1676, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1985, 69th Leg., ch. 58, Sec. 38, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 73, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.90, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 540, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. [1](#)), Sec. 4.09, eff. October 1, 2011.

Sec. 155.111. DISTRIBUTOR'S REPORT. (a) A distributor shall file with 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 amount of tobacco products purchased, received, and acquired;
- (5) the manufacturer's list price of tobacco products purchased, received, and acquired;
- (6) the amount of tobacco products sold, distributed, used, lost, or otherwise disposed of;
- (7) the amount of tobacco products on hand at the beginning and the end of the month; and
- (8) any other information the comptroller requires relating to tobacco products and to the payment of taxes due on them.

(b-1) In addition to the information required under Subsection (b), the report must show the net weight as listed by the manufacturer for each unit of tobacco products other than cigars that is purchased, received, or acquired.

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

(d) If more than 50 percent of all untaxed tobacco products received by the distributor in this state are actually sold outside of this state, the distributor shall include in the report only tobacco products that are sold in this state.

Acts 1981, 67th Leg., p. 1677, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 74, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 51, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1040, Sec. 49, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.91, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.45, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1263, Sec. 54, eff. Oct. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. [2154](#)), Sec. 15, eff. September 1, 2009.

Sec. 155.112. 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 tobacco products 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 tobacco products on which a tax of less than \$50 is due, as provided by Section 155.022.

(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. 52, eff. June 7, 1991.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.92, eff. Sept. 1, 1997.

SUBCHAPTER E. ENFORCEMENT OF TAX

Sec. 155.141. 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. 75, eff. Oct. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 1040, Sec. 50, Sept. 1, 1997;
Acts 1997, 75th Leg., ch. 1423, Sec. 19.93, eff. Sept. 1, 1997.

Sec. 155.143. SEIZURE. (a) The comptroller with or without process may seize:

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

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

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

(4) equipment, paraphernalia, or other tangible

personal property used by a person intending to avoid payment of taxes imposed by this chapter found in the place where the tobacco products are found.

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

Acts 1981, 67th Leg., p. 1678, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 76, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 53, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.94, eff. Sept. 1, 1997.

Sec. 155.144. COMPTROLLER'S REPORT. (a) If the comptroller seizes property under Section 155.143, 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. 1678, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 77, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 54, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.95, eff. Sept. 1, 1997.

Sec. 155.1445. SALE OF SEIZED TOBACCO PRODUCTS. (a) Tobacco products are perishable items.

(b) If the seized tobacco products are in a salable condition, the comptroller may sell the tobacco products, return the tobacco products to the manufacturer for credit, or destroy or dispose of the tobacco products.

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

(d) The comptroller shall place the proceeds from the sale of seized tobacco products 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 tobacco products, the person entitled to the tobacco products 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. 55, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.96, eff. Sept. 1, 1997.

Sec. 155.145. 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 shall 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 tobacco products seized under this chapter if the comptroller finds that 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. 1679, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 78, eff. Oct. 1,

1989; Acts 1991, 72nd Leg., ch. 409, Sec. 56, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1040, Sec. 51, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 19.97, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 22, eff. September 1, 2011.

Sec. 155.1451. 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 155.153, 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 tobacco products 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 H. Any unused appropriations remain in the general revenue fund.

(d) If an automobile or other vehicle seized under Section 155.143 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. Added by Acts 1991, 72nd Leg., ch. 409, Sec. 57, eff. June 7, 1991. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.98, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 23, eff. September 1, 2011.

Sec. 155.146. PHOTOGRAPHIC EVIDENCE IN CASES INVOLVING SEIZED TOBACCO PRODUCTS. (a) The comptroller may photograph tobacco products seized under Section 155.143 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 tobacco products.

(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 tobacco products 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. 24, eff. September 1, 2011.

Sec. 155.150. SEIZURE OR SALE NO DEFENSE. The seizure, forfeiture, and sale of tobacco products or property under this chapter, with or without court action, is not a defense to criminal prosecution for an offense or from liability for a penalty under this chapter.

Acts 1981, 67th Leg., p. 1680, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 155.151. WAIVER PERMITTED. (a) The comptroller may waive a forfeiture proceeding for property seized under Section 155.143 of this code if the owner or possessor of the property:

(1) pays the tax due; and

(2) pays to the state through the comptroller an additional sum equal to the tax due.

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

Acts 1981, 67th Leg., p. 1680, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 81, eff. Oct. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.99, eff. Sept. 1, 1997.

Sec. 155.152. PAYMENT TO TREASURY. The comptroller shall deposit all taxes collected under this chapter, after payment of costs, in the treasury to be allocated as provided by Subchapter H. Acts 1981, 67th Leg., p. 1680, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 82, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 58, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.100, eff. Sept. 1, 1997.

Sec. 155.153. 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, interest, penalties, and costs due to the state. Added by Acts 1991, 72nd Leg., ch. 409, Sec. 59, eff. June 7, 1991.

Sec. 155.154. DONATIONS. The comptroller may accept gifts, grants, and donations for the administration and enforcement of this chapter. Added by Acts 1991, 72nd Leg., ch. 409, Sec. 59, eff. June 7, 1991. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.101, eff. Sept. 1, 1997.

Sec. 155.155. 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. 59, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.102, eff. Sept. 1, 1997.

SUBCHAPTER F. ADMINISTRATION BY COMPTROLLER

Sec. 155.181. 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 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 in 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. 1681, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1989, 71st Leg., ch. 240, Sec. 83, eff. Oct. 1,

1989; Acts 1991, 72nd Leg., ch. 409, Sec. 61, eff. June 7, 1991;

Acts 1995, 74th Leg., ch. 1000, Sec. 52, eff. Oct. 1, 1995; Acts

1997, 75th Leg., ch. 1423, Sec. 19.104, eff. Sept. 1, 1997.

Sec. 155.182. PAYMENT OF DOUBLE AMOUNT. (a) If the comptroller finds that a person has sold tobacco products without the tax having been paid, the comptroller may require the person to pay the state through the comptroller a sum equal to twice the amount of tax due.

(b) If a person does not furnish the comptroller with any evidence showing payment of the tax on tobacco products purchased by the person, it is presumed that the tobacco products were sold

without reporting and paying the tax.

Acts 1981, 67th Leg., p. 1681, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1989, 71st Leg., ch. 240, Sec. 84, eff. Oct. 1,
1989; Acts 1991, 72nd Leg., ch. 409, Sec. 62, eff. June 7, 1991;
Acts 1997, 75th Leg., ch. 1423, Sec. 19.105, eff. Sept. 1, 1997.

Sec. 155.183. INSPECTION. (a) To determine the tax liability of a person dealing in tobacco products or compliance by the person with this chapter, the comptroller may:

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

(2) remain on the premises as long as necessary to determine the tax liability 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 tobacco products.

(b) A person dealing in tobacco products may not:

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

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

Acts 1981, 67th Leg., p. 1681, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1989, 71st Leg., ch. 240, Sec. 85, eff. Oct. 1,
1989; Acts 1991, 72nd Leg., ch. 409, Sec. 63, eff. June 7, 1991;
Acts 1995, 74th Leg., ch. 1000, Sec. 53, eff. Oct. 1, 1995; Acts
1997, 75th Leg., ch. 1423, Sec. 19.106, eff. Sept. 1, 1997.

Sec. 155.184. CREDIT FOR TAX PAID. (a) The comptroller may adopt rules providing for a credit or refund for tax paid on tobacco products if the tobacco products have become unfit for use or consumption or unsalable.

(b) The comptroller may not allow a credit or refund under this section unless the comptroller is satisfied that the tobacco

products are unfit for use or consumption or unsalable or have been returned to the manufacturer.

Acts 1981, 67th Leg., p. 1682, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 240, Sec. 86, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 63, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.107, eff. Sept. 1, 1997.

Sec. 155.185. DEFICIENCY DETERMINATION, PENALTIES, AND INTEREST. (a) If the comptroller has reasonable cause to believe that a tax report or the amount of tax 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 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. 64, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 1000, Sec. 54, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.108, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.46, eff. Oct. 1, 1999.

Sec. 155.186. 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. 64, eff. June 7, 1991.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 19.109, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 2.47, eff. Oct. 1, 1999.

SUBCHAPTER G. PENALTIES

Sec. 155.201. 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 required by this chapter to the comptroller or makes a false or incomplete report or application required by this chapter to the comptroller; or

(4) 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 chapter forfeits and shall pay to the state a penalty of not more than \$2,000 for each violation.

(c) A separate offense is committed each day on which a violation occurs.

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

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

jurisdiction.

Acts 1981, 67th Leg., p. 1682, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 58, Sec. 41, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 87, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 65, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.110, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 55, eff. Oct. 1, 2001.

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

(1) receives or possesses in this state tobacco products for the purpose of making a first sale;

(2) sells, offers for sale, or presents tobacco products as a prize or gift; or

(3) knowingly consumes, uses, or smokes tobacco products in an amount on which a tax of more than \$50 is due.

Acts 1981, 67th Leg., p. 1683, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 66, eff. June 7, 1991.

Sec. 155.203. POSSESSION: TAX DUE \$50 OR LESS. (a) A person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax of \$50 or less is required to be paid. The absence of evidence of tax payment is notice that the tax has not been paid and is prima facie evidence of nonpayment.

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

Acts 1981, 67th Leg., p. 1683, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 155.204. CONCEALMENT OF VIOLATION. A person commits an offense if the person uses any artful device or deceptive practice to conceal a violation of this chapter.

Acts 1981, 67th Leg., p. 1683, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 155.205. MISLEADING THE COMPTROLLER. A person commits an offense if the person misleads the comptroller in the

enforcement of this chapter.

Acts 1981, 67th Leg., p. 1683, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1989, 71st Leg., ch. 240, Sec. 88, eff. Oct. 1,
1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.111, eff. Sept. 1,
1997.

Sec. 155.206. REFUSING TO SURRENDER TOBACCO PRODUCTS. A person commits an offense if the person refuses to surrender to the comptroller on demand tobacco products possessed in violation of this chapter.

Acts 1981, 67th Leg., p. 1683, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1989, 71st Leg., ch. 240, Sec. 89, eff. Oct. 1,
1989; Acts 1997, 75th Leg., ch. 1423, Sec. 19.112, eff. Sept. 1,
1997.

Sec. 155.207. PERMITS. A person commits an offense if the person:

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

(2) as a distributor, wholesaler, or retailer, receives or possesses tobacco products 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 [155.102](#);

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

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

Acts 1981, 67th Leg., p. 1683, ch. 389, Sec. 1, eff. Jan. 1, 1982.
Amended by Acts 1985, 69th Leg., ch. 58, Sec. 42, eff. March 1,
1986; Acts 1991, 72nd Leg., ch. 409, Sec. 67, eff. June 7, 1991.

Sec. 155.2075. 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. 67, eff. June 7, 1991.

Amended by Acts 1993, 73rd Leg., ch. 790, Sec. 46(21), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 19.113, eff. Sept. 1, 1997.

Sec. 155.208. MISDEMEANOR. An offense under Sections 155.202-155.207 is a Class A misdemeanor.

Acts 1981, 67th Leg., p. 1684, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 67, eff. June 7, 1991.

Sec. 155.209. TRANSPORTATION OF TOBACCO PRODUCTS. A person commits an offense if the person:

(1) knowingly transports tobacco products taxed under this chapter without the tax being paid;

(2) wilfully refuses to stop a motor vehicle operated to transport tobacco products after a request to stop from an authorized representative of the comptroller; or

(3) while transporting tobacco products, refuses to permit a complete inspection of the cargo by an authorized representative of the comptroller.

Acts 1981, 67th Leg., p. 1684, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 67, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.114, eff. Sept. 1, 1997.

Sec. 155.210. 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 tobacco products 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. 1684, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 67, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 19.115, eff. Sept. 1,

1997.

Sec. 155.211. POSSESSION: TAX DUE MORE THAN \$50. (a) A person commits an offense if the person possesses, in violation of this chapter, tobacco products on which a tax of more than \$50 is required to be paid.

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

Acts 1981, 67th Leg., p. 1684, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 155.212. 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 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 tobacco products business;

(5) knowingly makes a false entry or fails to make entries in the books and records 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. 1684, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1985, 69th Leg., ch. 58, Sec. 43, eff. March 1, 1986; Acts 1989, 71st Leg., ch. 240, Sec. 90, eff. Oct. 1, 1989; Acts 1991, 72nd Leg., ch. 409, Sec. 68, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 55, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 19.116, eff. Sept. 1, 1997.

Sec. 155.213. FELONY. An offense under Sections 155.209-155.212 is a felony of the third degree.

Acts 1981, 67th Leg., p. 1684, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Amended by Acts 1991, 72nd Leg., ch. 409, Sec. 68, eff. June 7,

1991.

Sec. 155.214. OVERLAP OF PENALTIES. If an offense is punishable under Section 155.208 of this code and also under Section 155.213 of this code, the punishment prescribed by Section 155.213 of this code controls.

Acts 1981, 67th Leg., p. 1685, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 155.215. VENUE FOR FELONY. Venue of a prosecution for an offense punishable under Section 155.213 of this code is in Travis County or in the county where the offense occurred.

Acts 1981, 67th Leg., p. 1685, ch. 389, Sec. 1, eff. Jan. 1, 1982.

SUBCHAPTER H. ALLOCATION OF TAX

Sec. 155.241. ALLOCATION OF TAX. Revenue collected under this chapter shall be deposited to the credit of the general revenue fund.

Acts 1981, 67th Leg., p. 1685, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 155.2415. ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND AND CERTAIN OTHER FUNDS. (a) Notwithstanding Section 155.241, the proceeds from the collection of taxes imposed by Section 155.0211 shall be allocated as follows:

(1) the amount of the proceeds that is equal to the amount that, if the taxes imposed by Section 155.0211 were imposed at a rate of 40 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, would be attributable to the portion of that tax rate in excess of 35.213 percent, shall be deposited to the credit of the property tax relief fund under Section 403.109, Government Code;

(2) the amount of the proceeds that is equal to the amount that would be attributable to a tax rate of 35.213 percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal, if the taxes were imposed by Section 155.0211 at that rate, shall be deposited to the credit of the general revenue fund; and

(3) 100 percent of the remaining proceeds shall be deposited to the credit of:

(A) the physician education loan repayment program account established under Subchapter J, Chapter 61, Education Code; or

(B) the general revenue fund, if the comptroller determines that the unencumbered beginning balance of the physician education loan repayment account established under Subchapter J, Chapter 61, Education Code, is sufficient to fund appropriations and other direct and indirect costs from that account for the fulfillment of existing and expected physician loan repayment commitments during the current state fiscal biennium.

(b) Proceeds deposited in accordance with Subsection (a)(3)(B) may be appropriated only for health care purposes.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 285 (H.B. 2154), Sec. 16, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 36, eff. September 1, 2015.