

CHAPTER 31

S.B. No. 237

An Act relating to certain taxes administered by the comptroller of public accounts, time of accrual, due dates, periods covered, amount of tax, required reports, and credits; amending Subdivision (2), Subsection B, Section 6, Local Sales and Use Tax, as amended (Article 1066c, Vernon's Texas Civil Statutes); and amending the Tax Code, as amended, by amending Sections 182.083, 171.151, 171.005, 171.152, 171.153; Subsection (b), Section 153.210; Subsection (b), 171.201; Subsection (b), Section 171.202; by adding Section 171.1531 to Subchapter D, Chapter 171; and by repealing Sections 182.041 and 182.042.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (2), Subsection B, Section 6, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

“(2) If a purchaser who gives a resale certificate makes any use of tangible personal property which subjects the property to sales tax pursuant to the provisions of Section 151.154, Tax Code [For the purpose of the excise tax imposed by this Act on any retailer holding tangible personal property purchased on a resale certificate and which property becomes subject to the excise tax by reason of use or other consumption of the property], the use or other consumption of the property subjecting the property to tax is consummated at the place where the property is stored or kept at the time of or just prior to its use or consumption, unless the tangible personal property is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination.”

SECTION 2. Section 182.083, Tax Code, is amended to read as follows:

“Section 182.083. PAYMENT OF TAX IF BUSINESS BEGUN AFTER BEGINNING OF QUARTER. (a) *Except as provided in Subsection (b) of this section, if [1f] a person taxed under this chapter begins business on or after the first day of the quarter, then in lieu of the gross receipts tax provided for in this chapter, the tax for that quarter is \$50, payable to the treasurer in advance.*

“(b) If a person that begins business on or after the first day of the quarter is an incorporation, reincorporation, or survivor of a merger of a person or persons that were previously subject to a tax under this chapter, its report required under Section 182.081 of this code must show the combined gross receipts during the preceding quarterly period of the person or persons that were incorporated,

reincorporated, or merged to form the new entity. The gross receipts tax provided for in this chapter must be paid on the reported combined gross receipts required under this subsection."

SECTION 3. Sections 182.041 and 182.042, Tax Code, are repealed.

SECTION 4. Subsection (b), Section 153.210, Tax Code, is amended to read as follows:

"(b) The vehicle classes and amounts of tax are:

"Class A Less than 2,500 pounds \$31

"Class B 2,500 to 3,500 pounds 55

"Class C 3,501 to 4,500 pounds 69

"Class D 4,501 to 7,000 pounds 83

"Class E 7,001 to 10,000 pounds 97"

SECTION 5. Section 171.151, Tax Code, is amended to read as follows:

"Section 171.151. **PERIOD COVERED BY TAX.** The franchise tax shall be paid for each of the following:

"(1) an initial period beginning on the date that the corporation files its charter or is granted a certificate of authority or the date that a foreign corporation begins doing business in this state, whichever is earlier, and ending on the day before the first anniversary of that date;

"(2) a second period beginning on the first anniversary of the date that the corporation files its charter or is granted its certificate of authority or the date that a foreign corporation begins doing business in this state, whichever is earlier, and ending on April 30 following that date; and

"(3) after the initial and second periods have expired, a regular annual period beginning each year on May 1 and ending the following April 30."

SECTION 6. Section 171.005, Tax Code, is amended to read as follows:

"Section 171.005. **RATE OF TAX FOR CORPORATION IN PROCESS OF LIQUIDATION.** The franchise tax rate on a corporation in the process of liquidation, as defined by Section 171.102 of this code, is the rate established by Section 171.002 [~~171.002(a)(1)~~] of this code."

SECTION 7. Section 171.152, Tax Code, is amended to read as follows:

"Section 171.152. **DATE ON WHICH PAYMENT IS DUE.** (a) Payment of the tax covering the initial period is due within 90 days after the date that the initial period ends or, if applicable, within 91 days after the date of the merger.

"(b) Payment of the tax covering the second period is due on the same date as the tax covering the initial period.

"(c) Payment of the tax covering the regular annual period is due March 15 of each year before the beginning of the regular annual period; unless a corporation is the survivor of a merger which occurs any time from February 1 through April 30 of the annual report year, in which case the payment of the tax by the survivor will be due June 15. However, if the first anniversary of the date that the domestic corporation files its charter or the foreign corporation begins doing business in Texas or is granted its certificate of authority, whichever occurs first, is after October 3 [~~September 30~~] and before May 1, the payment of the tax covering the first regular annual period is due on the same date as the tax covering the initial period."

SECTION 8. Section 171.153, Tax Code, is amended to read as follows:

"Section 171.153. **BUSINESS ON WHICH TAX IS BASED.** (a) The tax covering the initial period is based on the business done by the corporation during the period beginning on the day the corporation files its charter or is granted a certificate of authority or the date that a foreign corporation begins doing business in this state, whichever is earlier, and:

"(1) ending on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business; or

"(2) ending on the day after the merger occurs, for the survivor of a merger which occurs after the day on which the tax is based in Subdivision (1) of Subsection (a) of Section 171.153 and before May 1 of the year an initial report is due by the survivor.

"(b) The tax covering the second period is based on the same business on which the tax covering the initial period is based and is to be prorated based on the length of the second period.

"(c) The tax covering the regular annual period is based on the business done by the corporation during its fiscal year that ends in the year before the year in which the tax is due; unless a corporation is the survivor of a merger which occurs between the end of its fiscal year in the year before the report year and May 1 of the report year, in which case the tax will be based on the financial condition of the surviving corporation for the 12-month period ending on the day after the merger. However, if the first anniversary of the date that the corporation files its charter, [or] is granted its certificate of authority, or begins doing business in this state is after October 3

[September 30] and before May 1, the tax covering the first regular annual period is based on the same business on which the tax covering the initial period is based."

SECTION 9. Subsection (b), Section 171.201, Tax Code, is amended to read as follows:

"(b) The corporation shall file the report on or before the date the payment is due under Subsection (a) of Section 171.152 [within 90 days after the date that the initial period established by Section 171.151(1) of this code ends]."

SECTION 10. Subsection (b), Section 171.202, Tax Code, is amended to read as follows:

"(b) The corporation shall file the report before March 16 of each year before the beginning of the regular annual period; unless under Subsection (c) of Section 171.152 the payment is due June 15, in which case the report will be due June 15. The report shall be filed on forms supplied by the comptroller."

SECTION 11. Subchapter D, Chapter 171, Tax Code, is amended by adding a new Section 171.1531 to read as follows:

"Section 171.1531. **CREDIT FOR SURVIVOR OF MERGER.** (a) 'Credit period' means the period from the date of the merger or the date the survivor was required to pay franchise tax, whichever is later, through the end of the tax period for which tax was actually paid by the nonsurvivors.

"(b) The survivor of a merger is entitled to a credit or refund in the amount of the franchise tax paid by the nonsurvivors for the credit period, provided the tax paid by the survivor for the credit period is based on the survivor's financial condition after the merger.

"(c) The credit or refund will be limited to the lesser of the amount of tax paid for the credit period by the survivor or by the nonsurvivors."

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on February 18, 1985, by a viva-voce vote; and that the Senate concurred in House amendment on April 2, 1985, by a viva-voce vote; passed the House, with amendment, on March 28, 1985, by a non-record vote.

Approved: April 11, 1985

Effective: August 26, 1985