

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 159. CONTROLLED SUBSTANCES TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 159.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Counterfeit substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Dealer" means a person who in violation of the law of this state imports into this state or manufactures, produces, acquires, or possesses in this state:

(A) seven grams or more of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance;

(B) fifty dosage units or more of a taxable substance not commonly sold by weight, consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance; or

(C) more than four ounces of a taxable substance consisting of or containing marihuana.

(4) "Marihuana" has the meaning assigned by Section 481.002, Health and Safety Code.

(5) "Simulated controlled substance" has the meaning assigned by Section 482.001, Health and Safety Code.

(6) "Tax payment certificate" means a stamp or other device provided by the comptroller under Section 159.003 of this code for use under this chapter.

(7) "Taxable substance" means a controlled substance, a counterfeit substance, a simulated controlled substance, or marihuana, or a mixture of any materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marihuana.

(8) "Dosage unit" means a tablet, pill, capsule, vial,

ampule, or other identifiable or separated unit designed or packaged to be used, taken, or ingested at one time.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(45), (65), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 705, Sec. 20, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 1031, Sec. 23, eff. Sept. 1, 1993.

Sec. 159.002. MEASUREMENTS. For purposes of this chapter, the weight of a taxable substance is its weight in the possession of the dealer.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Sec. 159.003. TAX PAYMENT CERTIFICATES. (a) The comptroller shall adopt a uniform system for providing, affixing, and displaying official tax payment certificates to be attached to a taxable substance as evidence that the tax imposed by this chapter has been paid.

(b) A tax payment certificate may not be used more than once.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Sec. 159.004. NO DEFENSE OR IMMUNITY. Nothing in this chapter provides a defense or affirmative defense to, exception to, or immunity from prosecution under the penal laws of this state relating to controlled substances, counterfeit substances, simulated controlled substances, or marihuana.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Sec. 159.005. CONFIDENTIAL INFORMATION. (a) Information provided by a person in a report or return made for purposes of paying a tax imposed by this chapter is confidential.

(b) The comptroller or any other public official or employee commits an offense if he reveals information made confidential by this section to any person other than:

(1) to the comptroller or a public official or employee whose duties involve the administration or collection of the taxes imposed by this chapter; or

(2) in a judicial proceeding involving a tax imposed by this chapter.

(c) An offense under Subsection (b) of this section is a Class A misdemeanor.

(d) Except in a prosecution directly related to a tax imposed by this chapter, information made confidential by this section may not be used in any way in a prosecution of the dealer for whom the report or return is made unless the information is obtained independently of the report or return.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

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

Sec. 159.101. TAX IMPOSED; RATE OF TAX. (a) A tax is imposed on the possession, purchase, acquisition, importation, manufacture, or production by a dealer of a taxable substance on which a tax has not previously been paid under this chapter.

(b) The rate of the tax is:

(1) \$200 for each gram of a taxable substance consisting of or containing a controlled substance, counterfeit substance, or simulated controlled substance;

(2) \$3.50 for each gram of a taxable substance consisting of or containing marihuana; and

(3) \$2,000 on each 50 dosage units, or portion of 50 dosage units, if the total amount is less than 50 dosage units, of a controlled substance that is not sold by weight.

(c) The tax becomes due immediately when a dealer possesses, purchases, acquires, manufactures, or produces in this state or imports into this state the taxable substance on which the tax has not previously been paid.

(d) In determining the total weight of taxable substance, a part of a gram remaining after the measurement of whole grams is considered as one gram.

(e) For purposes of this section, if a taxable substance consists of a mixture containing both marihuana and another substance listed in the definition of taxable substance provided by Section 159.001 of this code, the taxable substance is taxable under Subsection (b)(1) of this section and not under Subsection

(b)(2) of this section.

(f) If a determination made under this chapter becomes final without payment of the amount of the determination being made, the comptroller shall add to the amount a penalty of 10 percent of the amount of the tax and interest.

(g) In a redetermination proceeding held or a judicial proceeding brought under this chapter, a certificate from the comptroller that shows the issued determination is prima facie evidence of:

(1) the determination of the stated tax or amount of the tax;

(2) the stated amount of the penalties and interest; and

(3) the compliance of the comptroller with this chapter in computing and determining the amount due.

(h) The suppression of evidence on any ground in a criminal case that arises out of facts on which a determination is made under this chapter or the dismissal of criminal charges in such a case does not affect a determination made under this chapter.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 484, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 705, Sec. 21, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 57, eff. Oct. 1, 1995.

Sec. 159.102. TAX PAYMENT CERTIFICATE REQUIRED. (a) A dealer who pays a tax imposed by this chapter shall securely affix in the manner required by the comptroller to the taxable substance the appropriate tax payment certificate to show payment of the tax.

(b) A dealer shall obtain the necessary tax payment certificates before the tax becomes due as provided by Section 159.101 of this code. The possession of a taxable substance without the possession of the requisite amount or number of certificates is prima facie evidence that and is notice that the tax has not been paid as required by this chapter.

(c) The comptroller's rules shall provide for the return of unused certificates and for the refund of money for returned certificates.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Sec. 159.103. EXEMPTION. The possession, purchase, acquisition, importation, manufacture, or production of a taxable substance is exempt from the tax imposed by this chapter if the activity is authorized by law.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1995, 74th Leg., ch. 1000, Sec. 58, eff. Oct. 1, 1995.

#### SUBCHAPTER C. CRIMINAL PROVISIONS

Sec. 159.201. POSSESSION OF ITEM IF TAX UNPAID. (a) A dealer commits an offense if the dealer possesses a taxable substance on which the tax imposed by this chapter has not been paid.

(b) An offense under this section is a felony of the third degree. In addition to the fine provided by law for a felony of the third degree, a person convicted of an offense under this section shall be fined an amount equal to the amount of tax due and unpaid on the taxable substance that is the subject of the offense.

(c) An indictment for an offense under this section may be presented within six years from the date of the offense and not afterward.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

#### Sec. 159.202. COUNTERFEIT TAX PAYMENT CERTIFICATES.

(a) A person commits an offense if the person:

(1) prints, engraves, makes, issues, sells, or circulates a counterfeit tax payment certificate;

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

(3) places or causes to be placed a counterfeit tax payment certificate on a taxable substance.

(b) An offense under this section is a felony of the third degree.

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

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Sec. 159.203. PREVIOUSLY USED CERTIFICATES. (a) A person commits an offense if the person:

(1) uses, sells, offers for sale, or possesses for use or sale previously used tax payment certificates; or

(2) attaches or causes to be attached a previously used tax payment certificate to a taxable substance.

(b) An offense under this section is a felony of the third degree.

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

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1995, 74th Leg., ch. 1000, Sec. 60, eff. Oct. 1, 1995.

Sec. 159.205. RIGHT TO COLLECT SUBORDINATE TO OTHER LAWS.

(a) The right of the comptroller to collect the tax imposed by this chapter, including applicable penalty and interest, is subordinate to the right of a federal, state, or local law enforcement authority to seize, forfeit, and retain property under Chapter 481, Health and Safety Code; Chapter 59, Code of Criminal Procedure; or any other criminal forfeiture law of this state or of the United States. A lien filed by the comptroller as a result of the failure of a dealer to pay the tax, penalty, or interest due under this chapter is also subordinate to those rights.

(b) This section does not affect the validity of a lien or a collection action relating to the tax imposed by this chapter under any other circumstance.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(54), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 705, Sec. 22, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 1000, Sec. 61, eff. Oct. 1, 1995.

Sec. 159.206. SETTLEMENT OR COMPROMISE OF TAX. The comptroller may settle or compromise a tax, penalty, or interest imposed under this chapter only if:

(1) the prosecutor of a criminal offense under this chapter or of another offense arising out of the same incident or transaction requests in writing that the comptroller settle or compromise and specifies the reasons for the request; and

(2) the comptroller determines that the settlement or compromise is in the best interest of the state.

Added by Acts 1991, 72nd Leg., ch. 705, Sec. 23, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 1000, Sec. 62, eff. Oct. 1, 1995.

#### SUBCHAPTER D. DISPOSITION OF PROCEEDS

Sec. 159.301. DISPOSITION OF PROCEEDS. All proceeds from the collection of the tax, penalty, and interest imposed by this chapter shall be deposited to the credit of the general revenue fund. The fine imposed by Section 159.201(b) of this code and the fine provided by law for a felony shall be deposited to the credit of the county treasury of the county in which the offense occurred.

Added by Acts 1989, 71st Leg., ch. 1152, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 705, Sec. 24, eff. Sept. 1, 1991.