Sir: Your Committee on Engrossed Bills to whom was referred H. C. R. No. 35, granting permission to William Wendell Carroll to sue the State of Texas and the Teacher Retirement System of Texas. Has carefully compared same and finds it correctly engrossed. H. G. WELLS, Chairman.

Austin, Texas, April 18, 1961

Hon. James A. Turman, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred H. C. R. No. 55, granting permission to Mrs. Carmen Gutierrez to sue the State of Texas and the Texas Highway Department. Has carefully compared same and finds it correctly engrossed. H. G. WELLS, Chairman.

Austin, Texas, April 18, 1961

Hon. James A. Turman, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred H. C. R. No. 65, granting permission to Raymond Renfro and Stella Renfro to sue the State of Texas and the State Highway Department. Has carefully compared same and finds it correctly engrossed. H. G. WELLS, Chairman.

Austin, Texas, April 18, 1961

Hon. James A. Turman, Speaker of the House of Representatives.

LEAVES OF ABSENCE GRANTED

The following Member was granted leave of absence on account of important business:

Mr. Cook for today on motion of Mr. Heatly.

The following Member was granted leave of absence on account of illness:

Mr. Floyd for today on motion of Mr. Grover.

Mr. Oliver was granted leave of absence for today on account of illness in his family, on motion of Mr. Spilman.

SENATE BILL NO. 26 ON SECOND READING

The Speaker laid before the House on its second reading and passage to third reading.

S. B. No. 26, Authorizing student union fee at East Texas State College; and declaring an emergency.

The bill was read second time.

Mr. Cole of Hunt moved that further consideration of Senate Bill No. 26 be postponed until 9:00 o'clock a.m., April 26.

The motion prevailed.
SENATE BILL NO. 157 ON SECOND READING

The Speaker laid before the House on its second reading and passage to third reading
S. B. No. 157, Relating to false advertising of insurers not authorized to transact business in this state; and declaring an emergency.
The bill was read second time.
Mr. Hale moved that further consideration of Senate Bill No. 157 be postponed until next Wednesday, April 26, at 9:58 o'clock a.m.
The motion prevailed.

SONGS BY THE MT. PLEASANT HIGH SCHOOL CHOIR

In accordance with the provisions of H. S. R. No. 153, inviting the Mt. Pleasant High School Choir to appear before the House, the Members of the Choir were admitted to the Hall of the House and escorted to the Speaker's Rostrum.

Speaker Turman recognized the Honorable James V. Adams of Titus County who introduced Mr. Lee Gray, Director of the Choir, to the House.

Mr. Gray then led the Choir in several selections.

At the conclusion of the program, Speaker Turman introduced Mrs. Lee Gray to the House and expressed appreciation to Mr. Gray and the Choir for their appearance.

HOUSE BILL NO. 590 ON SECOND READING

The Speaker laid before the House on its second reading and passage to engrossment
H. B. No. 590, A bill to be entitled "An Act amending Section 1 of House Bill 11, Chapter 1, Acts of the 56th Legislature, Third Called Session, 1959, by repealing Chapter 17 (Stores and Mercantile Establishments) of Title 125a, Taxation-General, Revised Civil Statutes of Texas, as amended, and enacting a new Chapter 17, Title 125a of the Revised Civil Statutes of Texas, to be known as the Texas Business Excise Tax; providing for a tax upon the act of engaging, in this State, in the business of selling tangible personal property for end use or consumption; exempting certain food for human consumption and certain medicines and drugs; providing a method of computing such tax; including certain definitions; providing for licensing of persons so engaged; providing for the return and payment of such tax; for keeping of books and records and examination of such records; providing for penalties; providing for the Comptroller of the State of Texas to enforce such Act and do all things necessary in the enforcement of this Act; providing liens for the enforcement of the tax; providing the manner and time in which suits may be brought for the collection of such tax; making allocations of the revenues hereunder; and declaring an emergency."

Mr. Tunnell raised a point of order on further consideration of H. B. No. 590 at this time on the ground that the tax bills are not legally before the House as provided for in the motion by Mr. Hinson in that the Senate has not given the House permission to consider the bills on the day provided for the consideration of Senate Bills in the House, and that the notice of such consideration was not given by placing the printed Calendar on the Members' desks on the Calendar Day prior to such consideration.
The Speaker sustained the point of order as to the printed calendar not having been placed on the Members' desks on the Calendar Day prior to such consideration.

Mr. Miller moved that all the necessary rules be suspended for the purpose of taking up and considering at this time House Bill No. 590 and House Bill No. 727, in succeeding order.

A record vote was requested on the motion by Mr. Miller.
The motion by Mr. Miller prevailed by the following vote:

Yea—99
Alanis
Andrews
Bailey
Ballman
Berry
Banfield, Mrs.
Barlow
Baas

April 20, 1961 HOUSE JOURNAL 1267
Mr. Huebner (present), who would vote "Yea" with Mr. Cook (absent) who would vote "Nay."

The Speaker again laid H. B. No. 590 before the House and it was read second time.

Mr. Stewart of Galveston offered the following amendment to the bill:

Amend House Bill No. 590 by adding Subsection (g) under Article 17.02 as follows:

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Subsection (g). Assumption or Absorption of Tax by Retailer; Unlawful Advertising

(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that it will not be added to the selling price of the property sold or that, if added, it or any part of it will be refunded.

(2) Any person violating any provision of this section is guilty of a misdemeanor.
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The amendment was adopted.

Mr. Watson offered the following amendment to the bill:

Amend H. B. No. 590 by striking out the period at the end of Article 17.02 of Sec. 2 and adding the following:
"nor shall the term 'tangible personal property' include household soap, soap products and synthetic detergents."

The amendment was adopted.

Mr. Connell offered the following amendment to the bill:

Amend H. B. 590 by adding a new section "Article 17.03 General Exemptions" and renumbering the old Art. 17.03 and the following sections.

Article 17.03. General Exemptions.

The following are exempt from taxes imposed by this Act:

(1) Constitutional exemptions. There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumption in this State of tangible personal property the purchase price of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

(2) Gas, electricity, telephone and water. There are exempted from the taxes imposed by this Act the purchase price from the sales, of gas, electricity, telephone services and water (for domestic use) only when such gas, electricity, telephone services or water (for domestic use) are not sold at retail.

There are exempted from the taxes imposed by this Act the sale, distribution, and the storage, use or other consumption in this State of any product, material, service, or other item subject to a gross receipt sales, excise or use tax or subject to any occupation tax measured in whole or in part by gross receipts or sales price imposed by this State. This exemption shall include, but not be limited to, the sale, distribution, storage, use or other consumption of cigarettes and other tobacco products, motor fuel, beer, ale, and all alcoholic beverages.

(4) Prior Contracts. There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumption in this State of tangible personal property used: (a) for the performance of a valid and binding contract executed prior to the passage of this Act and not subject to change or modification by reason of a tax imposed by this Act.

(b) Pursuant to the obligation of a bid or bids submitted prior to the passage of this Act, which bid or bids could not be altered or withdrawn, drawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of a tax imposed by this Act. Provided, however, that notice of such contract or bid by reason of which an exclusion is claimed under this Subsection (4) must be given by the taxpayer to the Comptroller on or before the lapse of One Hundred Twenty (120) days from the date of passage of this Act.

(c) Vessels. There are exempted from the taxes imposed by this Act the purchase price from sales of vessels of more than fifty (50) tons burden by the builders thereof and the storage, use, or other consumption in this State of any ship of more than fifty (50) tons burden which is purchased in this State from the builders and with respect to which the use tax would, if the ship had been purchased outside this State or in interstate commerce, be inoperative because prohibited under the Constitution or the laws of the United States or the Constitution of this State. For purposes of this Act "vessels" shall include, but not be limited to, offshore drilling rigs.

(e) Animal life; feed, seeds, plants, fertilizer. There are exempted from the taxes imposed by this Act the purchase price from sales of and the storage, use, or other consumption of:

(a) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

(b) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

(c) Seeds and annual plants the products of which ordinarily constitute food for human consumption.
or are to be sold in the regular course of business.

(6) Fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business.

(7) Food products. There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumption in this State of food products for human consumption.

"Food products" include cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery.

"Food products" do not include medicines, tonics, or preparations in liquid, powdered, granular, table, capsule, lozenge or pill form sold as dietary supplements or adjuncts.

"Food products" also do not include meals served on or off the premises of the vendor or drinks or food furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the vendor.

"Food products" include milk shakes, malted milks, and any other beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(8) Ice. As incidental to the exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumption in this State of ice and dry ice used or employed in packing and shipping or transporting food products for human consumption between points or points within this State, or between points or points within a point or points without this State.

(9) Newspaper and periodicals. There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumption in this State, of tangible personal property which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three (3) months and any such newspaper or periodical.

(10) Meals. There are exempted from the taxes imposed by this Act the purchase price from the sale of, and the storage, use, or other consumption in this State of, meals and food products for human consumption served to the students or teachers of a school by public or private schools, school district, student organizations, parent-teacher association, and any blind person operating a restaurant or vending stand in an educational institution or other public building, and meals and food products for human consumption served by employers or employee organizations to the employees engaged in work upon a particular project or undertaking.

The term "food products" as used in this section has the meaning ascribed to it in number (7) of Section 2 above except that the term includes foods furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the vendor.

(11) Containers. There are exempted from the taxes imposed by this Act the purchase price from sales of and the storage, use or other consumption in this State of:

(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(b) Containers when sold with the contents if the purchase price of the contents is not required to be included in the measure of the taxes imposed by this Act.

(c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

As used herein the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

(12) Aircraft sold to interstate carriers, foreign governments and
nonresidents. There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside of this State, or sold to persons who are not residents of this State and who will not use such aircraft in this State otherwise than in the removal of such aircraft from this State.

(13) Charitable institutions. There are exempted from the taxes imposed by this Act the purchase price from the sale to and the storage, use, or other consumption by any charitable institution duly chartered as such in this or any other State.

(14) Farm machinery and equipment. There are exempted from the taxes imposed by this Act the purchase price from the sale of, and the storage or use in this State of farm machinery or farm equipment exclusively used or employed on farms or ranches in the production of food for human consumption.

(15) Occasional sales. There are exempted from the taxes imposed by this Act the purchase price from occasional sales of tangible personal property and the storage, use, or other consumptions in this State of tangible personal property, the transfer of which to the purchaser is an occasional sale.

(16) Watercraft. There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use, or other consumptions in this State of watercraft for use in interstate or foreign commerce involving the transportation of property or persons for hire or for use in commercial deep sea fishing operations outside the territorial waters of this State, and any sales of tangible personal property becoming a component part of such watercraft in the course of constructing, repairing, cleaning, altering, or improving the same, and the charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering or improving.

The amendment by Mr. Connell was lost.

Mr. Andrews moved to table H. B. No. 596.

The motion to table H. B. No. 596 prevailed by the following vote:

Year-129

Adams of Lubbock Hughes of Dallas
Alanis James
Allen Janinon Jarvis
Atwell Bailey Johnson of Bexar
Ballman Jones of Dallas
Bandeil, Mrs. Jones of Travis
Barlow Kessard
Barnes Kilpatrick
Bartram Koliba
Bass Kerith
Bell Lary
Berry Latimer
Boyson La Valle
Bridges Leaverton
Buchanan Lewis
Butler of McLennan
Caldwell McGregor
Cannon of El Paso
Carricker McLainey
Cole of Harris Markgraf
Cole of Hunt Martin
Collins Mullen
Connell Murray
Cory Mutcher
Cowe Niesmeyer
Crave Parsons
Crews Pearcy
Crews Peeler
Curington Peet
Dewey Pipkin
Duff, Miss Preston
Dungan Price
Dick hardt Guillian
Fletcher Ratcliff
Foreman Read
Gibbons Richards
Gladden Richardson
Glass Roberts of Hill
Glasing Roberts of Dawson
Grover Ross
Guffey Roseen
Hale Rosenthal
Harding Saunum
Haring Shannon
Harrington Shipley
Healey Slack
Hollowell Slides
Hughes of Grayson Snelson
PAIRED

Mr. Huebner (present), who would vote "Nay," with Mr. Cook (absent) who would vote "Yea."

Mr. Cotten (present), who would vote "Nay," with Mr. Spears (absent) who would vote "Yea."

REASON FOR VOTE

Although we oppose H. B. No. 590 in its present form, we voted "no" on the motion to table in order to keep the bill alive as a tax vehicle to work on later, in case no satisfactory tax bill is passed.

MAUD ISAACKS, JOHN E. BLAINE.

BILL SIGNED BY THE SPEAKER

The Speaker signed in the presence of the House, after giving due notice thereof and its caption had been read, the following enrolled bill:

S. B. No. 202, An Act authorizing the Texas State Parks Board to pledge the revenues from Palo Duro Canyon State Park for the purpose of constructing improvements, including a dam or dams and appurtenances thereto, but not limited to such construction; requiring necessary permit or permits from the State Board of Engineers; authorizing the issuance of bonds for such improvements and prescribing maximum rate of interest and time for payment; providing for issuance of mortgage on park property to secure payment of indebtedness; etc., and declaring an emergency.

HOUSE BILL NO. 727 ON SECOND READING

The Speaker laid before the House on its second reading and passage to engrossment, H. B. No. 727, A bill to be entitled "An Act imposing an excise tax in the amount of 2% of the purchase price of certain retail sales of personal property; imposing a use tax in the amount of 2% of the purchase price on the use of certain personal property; giving definitions setting limitations and exemptions; providing for administration and enforcement; providing for the disposition of revenues; repealing all laws in conflict; providing for severability; providing an effective date; and declaring an emergency."

The bill was read second time.

Mr. Wilson of Trinity offered the following amendment to the bill:

Amend House Bill 727 by striking all below the enacting clause and substituting in lieu thereof, the following:

Section 1. Amend Title 122A, Taxation - General, Revised Civil Statutes of Texas, 1925, by adding thereto a new Chapter to be known as Chapter 40 to read as follows:

Chapter 40

Sales and Use Tax

Art. 49.01. Short Title. This Chapter shall be known and may be cited as the Texas Sales and Use Tax.

Art. 49.02. Definitions.
The following words, terms and phrases when used in this Chapter shall have the following meanings, except where the context clearly indicates a different meaning.

(1) "Sales Tax" shall mean the tax imposed in Article 40.03 of this Chapter.

(2) "Use Tax" shall mean the tax imposed in Article 40.04 of this Chapter.

(3) "Person" includes any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, estate, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this State, any county, municipality, district, or other political subdivision of this State, or any other group or combination acting as a unit. Whenever used in any clause prescribing and imposing a penalty, the term "person," as applied to an association, shall include the members thereof and, as applied to a corporation, the officers thereof.

(4) "Taxpayer" means any person required to pay or collect a tax imposed by this Chapter.

(5) "Comptroller" means Comptroller of Public Accounts of the State of Texas.

(6) "State" means the State of Texas.

(7) "In this State" or "In the State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

(8) "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

(9) "Vendee": Any person maintaining a place of business in this State, selling or leasing tangible personal property, the sale or use of which is subject to a tax imposed by this Chapter.

(10) "Maintaining a place of business in this State" shall mean:

(a) Having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse, service enterprise or other place of business, or any agent of general or restricted authority irrespective of whether the place of business or agent is located here permanently or temporarily or whether the person or subsidiary maintaining such place of business or agent is authorized to do business within this State; or

(b) The engaging in any activity as a business within this State by any person, directly or by a subsidiary, in connection with the lease, sale or delivery of tangible personal property for use, storage or consumption including, but not limited to, having, maintaining or using any office, distribution house, sales house, warehouse or other place of business, any stock of goods or any solicitor, salesman, agent or representative under its authority, at its direction or with its permission, regardless of whether the person or subsidiary is authorized to do business in this State.

(c) Regularly or substantially soliciting orders within this State in connection with the lease, sale or delivery of tangible personal property to residents of this State by means of catalogues or other advertising, whether such orders are accepted within or without this State.

(11) "Purchaser" shall mean any person who acquires, for a consideration, the ownership, custody or permission, either by sale, lease or otherwise, of tangible personal property in exchange for a purchase price.

(12) "Purchase Price" shall mean:

(a) The total value of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail or purchase at retail, as herein defined, without any deduction on account of the cost or value of the tangible personal property sold, cost or value of transportation, cost or value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the State of Texas or any other expense, but excluding the value of the following: (i) returnable contained (ii) labor or services cost in delivering, installing or applying the tangible personal property sold if the consideration thereof is stated separately from the consideration paid for the tangible personal property sold at retail, provided, however, that the term "delivering"
shall include only actual transportation from the vendor’s place of business or storage to the place designated by the purchaser.

(b) There shall be deducted from the purchase price the value of any tangible personal property actually taken in trade or exchange within this State in lieu of the whole or any part of the purchase price. For the purpose of this paragraph (12) the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of such tangible personal property.

(c) In any transaction not at arm’s length, the purchase price shall not be less than the prevailing market price for similar tangible personal property.

(d) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to, licenses, sprinkler, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines, the full consideration paid or delivered to the vendor, or lessor shall be considered the purchase price, even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. Where the vendor or lessor supplies or provides an employee to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the purchase price if separately stated. There shall also be included as part of the purchase price the value of anything paid or delivered or promised to be paid or delivered by a lessor, whether it be money or otherwise, to any person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property which a lessee has the possession of custody of under a rental contract or lease arrangement.

(e) With respect to the use tax imposed by Article 40.04 upon any tangible personal property originally purchased by the user of such property six (6) months or longer prior to the first taxable use of such tangible personal property within the State, such user may elect to pay tax on a substituted base determined by considering the purchase price of such tangible personal property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of such first use within the State. Such election must be made by filing a notice thereof in the form specified by the Comptroller and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within one (1) year of the due date of such report and payment.

(13) “Resale” shall mean:
(a) Any transfer of ownership, custody or possession of tangible personal property for a consideration, including the grant of a license to use or consume and transactions where the possession of such tangible personal property is transferred but where the transferor retains title only as security for payment of the selling price whether such transaction be designated as bailment lease, conditional sale or otherwise.
(b) Any retention after September 1, 1961 of possession of tangible personal property, which a lessee has undertaken at the time of purchase to cause to be transported in interstate commerce to a destination outside this State.

(14) “Sale at Retail” shall mean:
(a) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatever means the same shall have been effected.
(b) Any retention after September 1, 1961 of possession, custody or a license to use or consume tangible personal property pursuant to a rental contract or other lease arrangement (other than as security).
(c) The term “Sale at Retail” shall not include any sale or other transfer of tangible personal property for the purposes of resale.

(15) “Occasional sale” shall mean:
(a) A sale of tangible personal property not held or used by a
vendor in the course of an activity for which he is required to hold a vendor's permit, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a vendor's permit:

(b) Any transfer of all or substantially all the tangible personal property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such tangible personal property is substantially similar to that which existed before such transfer. For the purpose of this paragraph (15), stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the tangible personal property of such corporation or other entity.

(16) "Use" shall mean the exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to transportation, storage or consumption; and provided further, that the term "use" shall not include (a) the demonstration of tangible personal property in the regular course of business, and (b) the interim keeping, retaining or exercising any right or power over tangible personal property for the sole purpose of subsequently transporting it outside this State for use outside this State, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property to be transported outside the State for use solely outside this State.

(17) "Storage" shall mean any keeping or retention of tangible personal property in this State.

(18) "Tangible Personal Property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

Art. 40.03. Imposition of Sales Tax.

(1) There is hereby imposed upon each separate sale at retail of tangible personal property within the State and all sales at retail of gas, liquefied petroleum gases, water, electricity, telephone service and telegraph service for domestic use a sales tax of two percent (2%) of the purchase price, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the State as herein provided. Every vendor shall add the sales tax imposed by this Article, or the average equivalent of said tax, to the purchase price, except as otherwise provided, and when added the tax shall constitute a part of the purchase price, shall be a debt of the purchaser to the vendor until paid and shall be recoverable at law in the same manner as the purchase price. The tax shall be added to the purchase price upon the following schedule:

<table>
<thead>
<tr>
<th>Amount of Purchase Price of Tax</th>
<th>Amount of Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.25 to $0.50, inclusive</td>
<td>1¢</td>
</tr>
<tr>
<td>$0.51 to $1.00, inclusive</td>
<td>2¢</td>
</tr>
</tbody>
</table>

When the purchase price exceeds One Dollar ($1), the tax to be added to the price shall be One Cent (1¢) for each Fifty Cents ($0.50) or fractional part thereof. When several articles are purchased together and at the same time, the tax shall be computed on the total amount of the several items. Breakage under this Article in an amount not to exceed three per cent (3%) of the total amount of tax collected in any one (1) reporting period shall be retained by the vendor as compensation for the collection of the tax imposed by this Article during such reporting period.

(2) The amount collected by the vendor from the purchaser in reimbursement of the sales tax must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

(3) If a purchaser certifies in writing to a vendor that the property purchased will be used in a manner or for a purpose entitling the vendor and the purchaser to regard the purchase price from the sale as exempted under this Chapter from the tax or taxes imposed by this Chapter, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for the payment of the tax and shall pay it over to the State as herein provided for payment over by the vendor to the State.
Art. 40.04. Imposition of Use Tax.

There is hereby imposed upon the use within this State of tangible personal property purchased at retail, or after the effective date of this Chapter, a tax of two percent (2%) of the purchase price, which tax shall be paid to the State by the person who uses such tangible personal property as herein provided, except that such tax shall not be paid by such person where he has paid an excise tax imposed by Article 40.03 of this Chapter with respect to tangible personal property.

The tax shall be paid to the person who uses such tangible personal property used or consumed in this State of tangible personal property purchased at retail except that such tax shall not be paid the excise tax imposed by Article 40.03 of this Chapter with respect to tangible personal property.

The tax shall be paid to the person where he bas paid the excise tax imposed by Article 40.03 of this Chapter with respect to tangible personal property used or consumed in this State of tangible personal property purchased at retail.

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(i) The sale at retail or use of tangible personal property to be used or consumed for ship cleaning or maintenance or for fuel, supplies, ships' equipment, ships' stores or sea stores on vessels to be operated principally outside the limits of the State.

(j) The sale at retail or use of watercraft for use in interstate or foreign commerce involving the transportation of property or persons for hire or for use in commercial deep sea fishing operations outside the territorial waters of this State, and any sale or use of tangible personal property becoming a component part of such watercraft in the course of constructing, repairing, cleaning, altering, or improving the same.

(k) The sale at retail or use of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government, or sold to any foreign government for use by such government outside of this State, or sold to persons who are not residents of this State and who will not use such aircraft in this State otherwise than in the removal of such aircraft from this State.

(l) The sale at retail or use of nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(m) The sale at retail or use of returnable containers when sold with the contents at the purchase price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

(n) The sale at retail or use of returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. As used in this Article the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers.

(o) The sale at retail or use of tangible personal which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three (3) months and any such newspaper or periodical.

(p) The sale at retail or use of any form of animal life of a kind the products of which ordinarily constitute food for human consumption, and are to be sold in the regular course of business.

(q) The sale at retail or use of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, and are to be sold in the regular course of business.

(r) The sale at retail or use of seeds and annual plants the products of which ordinarily constitute food for human consumption and are to be sold in the regular course of business.

(s) The sale at retail or use of farm machinery or farm equipment exclusively used or employed on farms or ranches in the production of food for human consumption.

(t) The sale at retail or use of food products. "Food products" include cereals and cereal products, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products other than candy and confectionery, coffee and coffee substitutes, tea, cocoa and cocoa products other than candy and confectionery.

"Food products" do not include medicines, tonics, or preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form sold as dietary supplements or adjuncts.

"Food products" also do not include meals served on or off the premises of the vendor or drinks or food furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the vendor.

"Food products" include milk shakes, malted milks, and any other...
beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(v) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(q) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(u) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(w) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(x) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(y) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.

(z) The sale at retail of, or use of, beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, which are purchased for consumption off the premises of the vendor.
Art. 40.06. Presumption of Taxability.

(1) Presumption of taxability: resale certificates. For the purpose of the proper administration of this Chapter and to prevent evasion of the sales tax it shall be presumed that all purchases are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the vendor, unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for resale.

(2) Effect of certificate. The certificate relieves the vendor from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in Article 40.07 and who, at the time of purchasing the tangible personal property intends to sell it in the regular course of business or is usable to ascertain at the time of purchase whether the taxable personal property will be sold or will be used for some other purpose.

(3) Form of certificate. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the Comptroller may prescribe.

(4) Use Tax Liability Incurred. If a purchaser who gives a certificate makes any use of the tangible personal property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be taxable to the purchaser under Article 40.07 of this Chapter as of the time the tangible personal property is first used by him, and the purchase price of the tangible personal property to him shall be the measure of the tax. Only when there is an unsatisfied liability on this basis shall the vendor be liable for the excise tax with respect to the sale of the tangible personal property to the purchaser. If the sole use of the tangible personal property other than retention, demonstration, or display in the regular course of business is the rental of the tangible personal property while holding it for sale, the purchaser may elect to include in his total purchase prices received the amount of the rental charge rather than the purchase price of the tangible personal property to him.

(5) Resale certificates—fungible goods. If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

Art. 40.07. Permits.

(1) Application for Permit. Every person desiring to engage in or conduct business as a vendor within this State shall file with the Comptroller an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the Comptroller and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the Comptroller may require. The application shall be signed by the owner or a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, or by the applicant a separate permit for each place of business within the State. A permit is not assignable and is valid for each permit.

(2) Permit fee. At the time of making an application an applicant shall pay to the Comptroller a permit fee of Three Dollars ($3) for each permit.

(3) Issuance and display of permit. After compliance with paragraphs (1) and (2) of this Article by the applicant, the Comptroller shall grant and issue to each applicant a separate permit for each place of business within the State. A permit is not assignable and is valid only for each permit.
only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

(4) Renewal of permit. A vendor whose permit has been previously suspended or revoked shall pay the Comptroller a fee of Three Dollars ($3) for the renewal or issuance of a permit.

(5) Revocation of permit. Whenever any person fails to comply with any provision of this Chapter relating to the Sales Tax or any rule or regulation of the Comptroller relating to the Sales Tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person ten (10) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one (1) or more of the permits held by the person. The Comptroller shall give the person written notice of the suspension or revocation of any of his permits. The notices herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter relating to the Sales Tax and the regulations of the Comptroller.

The Comptroller shall not issue a new permit after a permit has been revoked for the third time within any two-year period except upon payment by the former holder of the permit of a fee of Twenty-five Dollars ($25). When giving notice of the second revocation the Comptroller shall also notify the person that in the event his permit is again revoked within two (2) years from the date of the first revocation he shall pay a fee of Twenty-five Dollars ($25) for a new permit after such third revocation. In the event of additional revocations the two-year period shall commence to run from the date of the first revocation of the permit for the issuance of which the fee of Twenty-five Dollars ($25) was paid.

Art. 49.08. Payment of Tax.

(1) Due Date. The taxes imposed by this Chapter are due and payable to the Comptroller quarterly, on or before the last day of the month next succeeding each quarterly period. The quarters referred to in this Article shall be the quarters of the State fiscal year.

(2) Return. On or before the last day of the month following each quarterly period, of three (3) months, a return for the preceding quarterly period shall be filed with the Comptroller in such form as the Comptroller may prescribe.

For purposes of the sales tax a return shall be filed by every vendor. For purposes of the use tax a return shall be filed by every person purchasing tangible personal property, the storage, use, or other consumptions of which is subject to the use tax, who has not paid the sales tax due to a vendor required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

(3) Contents of Return. For the purposes of the excise tax the return shall show the following:

(a) The total purchase prices received by the vendor during the preceding reporting period.

(b) The total amount of purchases subject to tax imposed under this Chapter during the preceding reporting period.

(c) The total amount of purchases exempt from tax during the preceding reporting period.

(d) The total amount of tax collected during the preceding reporting period.

(e) The amount of breakage from tax collections during the preceding reporting period which the vendor is authorized to retain.

(f) The total amount of tax owed the State for the previous reporting period.

(g) Such other information as the Comptroller may require.

(4) Worthless accounts. In any return filed under the provisions of this Chapter the vendor may credit, under rules and regulations prescribed by the Comptroller, against the tax shown to be due on the return the amount of excise tax previously but subsequent to the effective date of this Chapter re-
A tax paid in accordance with such collection and tax paid accordingly.

1. Determination. If the Comptroller is not satisfied with the reported or discovered the Comptroller in whole or in part, the Comptroller may require the amount so collected shall be included in the first return filed after such collection and tax paid accordingly.

5. Filing Returns. The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the Comptroller.

6. Return periods. The Comptroller, in his discretion, may extend the period for filing a return for any purpose, to facilitate the collection by the State of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than those specified herein, or for other than quarterly periods.

7. Rentals or leases. For the purposes of the excise tax purchase price from rentals or leases of tangible personal property shall be reported and the tax paid in accordance with such rules and regulations as the Comptroller may prescribe.

8. Extension of time. The Comptroller for good cause may extend for not to exceed one (1) month the time for making any return or paying any amount required to be paid under this Chapter. The extension may be granted at any time provided a request therefor is filed with the Comptroller within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of half of one percent per month or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.

Deficiency Determination. The Notice of determination shall be served personally or by mail, it shall be registered mail and shall be addressed to the vendor or person using tangible personal property written notice of its determination. The notice may be served personally or by mail; if by mail, it shall be registered mail and shall be addressed to the vendor or per-
son using tangible personal property at his address as it appears in the records of the Comptroller, but the service shall be deemed complete at the time of the deposit of the notice in the mail without extension of time for any reason.

(7) Limitations; deficiency determinations.

(a) Except in the case of fraud, it shall be made in this Chapter or authorized rules and regulations, failure to make a return, or claim for additional amount pursuant to paragraph (3) of Article 40.12, every notice of a deficiency determination shall be mailed within three (3) years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or, in three (3) years after the return is filed, whichever period expires the later. In the case of failure to make a return, or claim for additional amount pursuant to paragraph (3) of Article 40.12, every notice of determination shall be mailed within eight (8) years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(b) The limitation specified in this paragraph (7) does not apply in case of a sales tax proposed to be determined with respect to sales of tangible personal property for the use of which notice of a deficiency determination has been or is given pursuant to paragraph (6) of Article 40.09, paragraph (5) of Article 40.11 and to subparagraph (a) of this paragraph (7). The limitation specified in this paragraph does not apply in case of an amount of use tax proposed to be determined with respect to use of tangible personal property for the sale of which notice of a deficiency determination has been or is given pursuant to paragraph (6) of Article 40.09, paragraph (5) of Article 40.10 and paragraph (2) of Article 40.11 and to the subparagraph (a) of this paragraph (7).

(8) Waiver. If before the expiration of the time prescribed in paragraph (7) of this Article the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Art. 40.10. Determination if No Return Made.

(1) Determination; failure to file return. If any person fails to make a return, the Comptroller shall make an estimate of the amount of the total purchase prices received by the person, or, as the case may be, of the amount of the total purchase price of tangible personal property purchased by the person, use of which in this State is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Comptroller's possession or may come in his possession. Upon the basis of this estimate the Comptroller shall compute and determine the amount required to be paid to the State, adding to the sum thus arrived at a penalty equal to ten percent (10%) thereof. One (1) or more determinations may be made for one (1) or for more than one (1) period. When a vendor's business is discontinued a determination may be made at any time thereafter, with the periods specified in paragraph (7) of Article 40.09, as to liability arising out of that business, irrespective of whether the determination is a separate determination or made as part of a determination of liability as otherwise specified in this Chapter.

(2) Offsets. In making a determination the Comptroller may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The amount on underpayments and overpayments shall be computed in the manner set forth in Article 40.11 and paragraph (7) of Article 40.12.

(3) Interest. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one-half of one percent (½ of ½%) per month, or fraction thereof, from the last day of the month follow.

(1) Petition for redetermination. Any person against whom a determination is made under Article 40.09 or Article 40.10 of this Chapter or any person directly interested may petition for a redetermination within thirty (30) days after service of notice thereof. If a petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.

(2) Oral hearing. If a petition for redetermination is filed within the thirty (30) day period, the Comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing. The Comptroller may continue the hearing from time to time as may be necessary.

(3) Decrease or increase of determination. The Comptroller may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing.

(4) Finality date or order or decision. The order or decision of the Comptroller upon a petition for a redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof.

(5) Due date of determination and penalty. All determinations made by the Comptroller under Article 40.09 or Article 40.10 of this Chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten percent (10%) of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(6) Service of notice. Any notice required by this Article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.
notice of a deficiency determination.

Art. 40.13. Interest and Penalties.

Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State, except amounts of determinations made by the Comptroller under Article 40.09 or Article 40.10 of this Chapter, within the time required shall pay a penalty of ten percent (10%) of the tax or amount of the tax, in addition to the tax or amount of tax plus interest at the rate of one-half of one percent (0.5%) per month, or fraction thereof, from the date on which the amount of tax required to be collected became due and payable to the State until the date of payment.


(1) Security. The Comptroller, whenever he deems it necessary to ensure compliance with this Chapter, may require any person subject thereto, to place with him such security as the Comptroller may determine. The amount of the security shall be fixed by the Comptroller but, except as noted below, shall not be greater than twice the estimated average liability of persons filing returns for monthly periods, determined in such manner as the Comptroller deems proper, or Ten Thousand Dollars ($10,000), whichever amount is the lesser. The limitations herein provided apply regardless of the type of security placed with the Comptroller. The amount of the security may be increased or decreased by the Comptroller subject to the limitations herein provided. The Comptroller may sell the security at public auction if it becomes necessary to do so in order to recover any tax or any amount required to be collected, interest, or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail, if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his address as it appears in the records of the Comptroller. Security in the form of a bearer bond issued by the United States or the State of Texas which has a prevailing market price may, however, be sold by the Comptroller at private sale at a price not lower than the prevailing market price thereof. Upon any sale any surplus above the amount due shall be returned to the person who placed the security.

(2) Notice to creditors. If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Comptroller may, not later than three (3) years after the payment became delinquent, or within three (3) years after the last recording of an abstract under paragraph (3) of Article 40.16 or of a certificate under paragraph (2) of Article 40.16, give notice thereof personally or by registered mail to all persons, including any officer or department of the State or any political subdivision or agency of the State, persons required to file returns for quarterly periods or five (5) times the average liability of persons filing returns for quarterly periods or five (5) times the average liability of persons filing returns for monthly periods, or Ten Thousand Dollars ($10,000), whichever amount is the lesser.

(3) Notice of transfer. Any person to whom notice under paragraph (2) of this Article has been given shall be given notice of the proposed transfer or disposition of any personal property, or debts in their possession or under their control, of any delinquent taxpayer to the Comptroller. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts to the delinquent or such person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any State officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the Comptroller. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the Comptroller consents to a transfer or disposition or until sixty (60) days elapse after the receipt of the notice, whichever
period expires the earlier. All persons so notified shall forthwith after receipt of the notice advise the Comptroller of all such credits, other personal property, or debts in their possession, under their control, or owed by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the State for any indebtedness due under this Chapter from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Art. 40.15. Suit for Tax.

(1) Court action. At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three (3) years after the delinquency of any tax or any amount of tax required to be collected, or within three (3) years after the last recording of an abstract under paragraph (3) of Article 40.16 or of a certificate under paragraph (2) of Article 40.17 the Comptroller may bring an action in the courts of this State, of any other state, or of the United States in the name of the people of the State of Texas, to collect the amount delinquent together with penalties and interest.

(2) Rules of procedure. The Attorney General shall prosecute the action, and the provisions of the Rules of Civil Procedure and statutes relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

(3) Attachments. In the action a writ of attachment may issue and no bond or affidavit previous to the issuance of the attachment is required.

(4) Certificate of Delinquency. In the action a certificate by the Comptroller showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of tax, of the delinquency of the amounts set forth and of the compliance by the Comptroller with all the provisions of this Chapter in relation to the computation and determination of the amounts.

(5) Service of process. In any action relating to the use tax brought under this Chapter process may be served according to the Rules of Civil Procedure and statutes of this State.


(1) Request for judgment. If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may within three (3) years after the amount is due file in a court of competent jurisdiction in Travis County, or any county where the taxpayer has his residence, a petition for summary judgment for the amount of taxes due. The petition shall specify the amount required to be paid, interest and penalty due, the name and address as it appears on the records of the Comptroller with this Chapter in relation to the determination of the amount required to be paid, and a request that summary judgment be entered against the person in the amount required to be paid, together with interest and penalty as set forth in the petition.

(2) Entry and filing of judgment. The court immediately upon the filing of the petition, shall enter a judgment for the people of the State of Texas against the person in the amount required to be paid, together with interest and penalty as set forth in the petition. The county clerk may file the judgment in a looseleaf book entitled, "Special Judgments for State Sales Tax".

(3) Abstract of judgment. An abstract of the judgment or a copy may be filed for record with the county clerk of any county. From the time of the filing the
amount required to be paid, together with interest and penalty set forth, constitutes a lien upon all the real property in the county owned by the person liable, or afterward and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the date of the judgment entered unless sooner released or otherwise discharged. The lien may within ten (10) years from the date of the judgment or within ten (10) years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record in the office of the county recorder of any county an abstract or copy of the judgment and from the time of such filing the lien shall be extended to the real property in such county for ten (10) years unless sooner released or otherwise discharged.

(4) Executions. Execution shall issue upon the judgment upon request of the Comptroller in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the Rules of Civil Procedure and statutes of this State.

Art. 40.17. Priority and Lien of Taxes.

(1) Priority. The amounts required to be paid by any person under this Chapter together with interest and penalties shall be satisfied first in any of the following cases:

(a) whenever the person is insolvent;

(b) whenever the person makes a voluntary assignment of his assets;

(c) whenever the estate of the person in the hands of executor, administrator, or heirs is insufficient to pay all the debts due from the deceased;

(d) whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this Chapter are levied upon by process of law.

This does not give the State a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

The preference given to the State by this Article shall be subordinate to the preferences given to claims for personal services by the laws of this State.

(2) Recording certificate; lien. If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may within three (3) years after the amount is due file for record in the office of any county clerk a certificate specifying the amount, interest, and penalties due, the name and address as it appears on the records of the Comptroller of the person liable for the same, and the fact that the Comptroller has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with interest and penalty constitutes a lien upon all real property in the county owned by the person or afterward and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the time of the filing of the certificate unless sooner released or otherwise discharged. The lien may within ten (10) years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record a new certificate in the office of the county clerk of any county in the manner herein provided, and the lien as extended shall be extended to the real property in such county for ten (10) years unless sooner released or otherwise discharged.

(3) Release of lien. The Comptroller may at any time release all or any portion of the property subject to any lien provided for in this Chapter from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are sufficiently secured by a lien or other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

(4) Certificate of release. A certificate by the Comptroller to the effect that any property has been released from the lien or that the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property
has been released or that the lien has been subordinated as provided in the certificate.

Art. 40.18. Warrant for Collection of Tax.

(1) Warrant; time of issuing. At any time within three (3) years after any person is delinquent in the payment of any amount herein required to be paid, or within three (3) years after the last recording of an abstract under paragraph (3) of Article 40.16 or of a certificate under paragraph (2) of Article 40.17, the Comptroller or its authorized representative may issue a warrant for the enforcement of any lien and for the collection of any amount required to be paid to the State under this Chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and a sale pursuant to a writ of execution.

(2) Fees and expenses. The Comptroller may pay to the sheriff the same fees, commissions, and expenses for his service as are provided by law for similar service pursuant to a writ of execution.

(3) Collection of fees. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this Chapter and may be collected from him by virtue of the warrant or in any other manner provided in this Chapter for the collection of the tax.


(1) Seizure and sale. At any time within three (3) years after any person is delinquent in the payment of any amount, the Comptroller may forthwith collect the amount in the following manner: the Comptroller shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

Any seizure made to collect a sales tax due shall be only of property of the vender not exempt from execution under the laws of this State.

(2) Notice of sale. Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least ten (10) days before the date set for the sale in the following manner: the notice shall be enclosed in an envelope addressed to the person, in case of a sale for use taxes due, at his last known address or place of business, and, in case of a sale for sales taxes due, at his last known residence or place of business in this State. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten (10) days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three (3) public places in the county ten (10) days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs, are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(3) Bill of sale; deed. At the sale the Comptroller shall sell the property in accordance with law and the notice and shall deliver to the person, in case of a sale for use taxes due, at his last known address or place of business, a bill of sale for the personal property and a deed for any real property sold. The bill of sale and deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(4) Disposition of proceeds. If, upon the sale of moneys received exceed the total of all amounts, including interest, penalties, and costs due the State, the Comptroller shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the Comptroller prior to the sale notice of his interest or lien, the Comptroller shall withhold any excess pending a determination of
the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Comptroller shall deposit the excess money with the State Treasurer, as trustees for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

Art. 40.20. Payment on Termination of Business and Successor's Liability.

(1) Withholding by purchaser. If any vendor liable for any amount under this Chapter sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Comptroller showing that it has been paid or a certificate stating that no amount is due.

(2) Liability of purchaser; release. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than sixty (60) days after receiving the request, the Comptroller shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Comptroller of the amount that must be paid as a condition of issuing the certificate. Failure of the Comptroller to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the vendor sells out his business or stock of goods or at the time that the determination against the vendor becomes final whichever event occurs the later.


(1) Records. The Comptroller shall keep a record of collections made under this Chapter.

(2) Remedies, cumulative. The remedies of the State provided for in this Act are cumulative, and no action taken by the Comptroller or Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

(3) Authority of Comptroller. In all proceedings under this Chapter the Comptroller may act on behalf of the State of Texas.

Art. 40.22. Claim for Refund.

(1) Credits and refunds. (a) If the Comptroller determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the Comptroller shall set forth that fact in the records of the Comptroller. The excess amount collected or paid shall be credited on any amounts then due and payable from the person under this Chapter, and the balance shall be refunded to the person, or his successors, administrators, or executors.

(b) In the case, however, of a determination by the Comptroller that an amount not exceeding Twenty-five Dollars ($25) was not required to be paid under this Chapter the Comptroller may credit the amount on any amounts then due and payable from the person by whom the amount was paid and may refund the balance to the person or his successors, administrators, or executors.

(c) Any overpayment of the sales tax by a purchaser to a vendor who is required to collect tax and who gives the purchaser a receipt therefor pursuant to Article 40.03 shall be credited or refunded by the State to the purchaser.

(2) Claim; limitation period. No refund shall be approved by the Comptroller after a period of three (3) years elapsing after the close of the quarterly period for which the overpayment was made, or after six (6) months from the date the determinations made under Article 40.08 and Article 40.09, after six (6) months from the date the determinations become final, or after six (6) months from the date of overpayment, whichever period expires the
(a) in the case of a refund, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(3) Disallowance of interest. If the Comptroller determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

Art. 40.23. Suit for Refund.

(1) Enjoining collection forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this State or any officer of the State to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

(2) Necessity of refund claim. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed pursuant to Article 40.22.

(3) Action for refund; limitation. Within ninety (90) days after mailing of the notice of the Comptroller's action upon a refund claim filed pursuant to Article 40.22, the claimant may bring an action against the Comptroller on the grounds set forth in the claim in a court of competent jurisdiction in Travis County, Tex., for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of the overpayment.

(4) When refund claim not acted upon. If the Comptroller fails to mail notice of action on a claim within six (6) months after the claim is filed, the claimant may, prior to the mailing of notice by the Comptroller of its action on the claim consider the claim disallowed and bring an action against the Comptroller on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(5) Disposition of amount of judgment. If judgment is rendered
for the plaintiff, the amount of the judgment shall first be credited on any sales or use tax or amount of use tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

(6) Interest. In any judgment, interest shall be allowed at the rate of six percent (6%) per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than thirty (30) days, the date to be determined by the Comptroller.

(7) Judgment for assignee forbidden. A judgment shall not be rendered in favor of the plaintiff in any action brought against the Comptroller to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.


(1) Erroneous refunds, Actions. The Comptroller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Travis County, Texas, in the name of the State of Texas.

(2) Place of trial. The action shall be held in Travis County, Texas, unless the court with the consent of the Attorney General orders a change of place of trial.

(3) Rules of Procedure, etc. The Attorney General shall prosecute the action, and the provisions of the Rules of Civil Procedure and the statutes relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

Art. 40.25. Cancellations.

(1) Cancellation of determination. If any amount in excess of Twenty-five Dollars ($25) has been illegally determined either by the person filing a return or by the Comptroller, the Comptroller may authorize the cancellation of the amount upon his records. If an amount not exceeding Twenty-five Dollars ($25) has been illegally determined either by the person filing a return or by the Comptroller, the Comptroller may authorize the cancellation of the amount upon his records.

Art. 40.26. Enforcement by Comptroller; rules and regulations. The Comptroller shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter. The Comptroller may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

Art. 40.27. Employees and representatives of Comptroller. The Comptroller may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of this Chapter and may designate representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this Chapter or other laws of this State upon the Comptroller.

Art. 40.28. Records. Every vendor, and every person storing, using, or otherwise consuming in this State tangible personal property purchased from a vendor shall keep such records, receipts, invoices, and other pertinent papers in such form as the Comptroller may require.

Art. 40.29. Examination of records. The Comptroller or any person authorized in writing by it may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

Art. 40.30. Reports relative to use tax liability. In administration of the use tax the Comptroller may require the filing of reports by any person or class of persons for their possession or custody information relating to purchase of tangible personal property the use of which is subject to the tax. The reports shall be filed when the
Comptroller requires and shall set forth the names and addresses of purchasers and vendor of the tangible personal property, the purchase price of the tangible personal property, the date of sale, and such other information as the Comptroller may require.

Art. 40.31. Divulging of information forbidden. It is unlawful for the Comptroller or any person having an administrative duty under this Chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any vendor or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particular thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination by other State officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person of the records maintained by the Comptroller under this Chapter.

Art. 40.32. Criminal penalties. Any vendor or other person who fails or refuses to furnish any return required by this Chapter, or who fails or refuses to furnish a supplemental return or other data required by the Comptroller, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not exceeding Five Hundred Dollars ($500) for each offense.

Art. 40.33. Same. Any person required to make, render, sign, or verify any report who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by law to be made shall be guilty of a misdemeanor. He shall upon conviction for each offense be fined not less than Three Hundred Dollars ($300) and not more than Five Thousand Dollars ($5,000), or be imprisoned for not exceeding one (1) year in the county jail, or be subject to both the fine and imprisonment.

Art. 40.34. Violation of law. Any violation of this Chapter except as otherwise provided, is a misdemeanor and upon conviction punishable by a fine not to exceed Two Hundred Dollars ($200).

Art. 40.35. Statute of Limitations. Any prosecution for violation of any of the penal provisions of this Chapter shall be instituted within three (3) years after the commission of the offense.

Art. 40.36. Disposition of proceeds. All fees, taxes, interest and penalties, imposed and all amounts of tax required to be paid to the State under this Chapter shall be paid to the Comptroller in the form of remittances payable to the Comptroller of Public Accounts of Texas. The Comptroller shall transmit all fee payments and two percent (2%) of all taxes, interest and penalties collected under this Chapter to the State Treasurer to be deposited in the State General Revenue Fund. The Comptroller shall transmit all fees, taxes, interest and penalties collected under this Chapter to the State Treasurer to be deposited in the State General Revenue Fund.

Art. 40.37. Res judicata. In the determination of any case arising under this Chapter the rules of res judicata are applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

Art. 40.38. Repealer. Chapter 6 and Chapter 20, Title 122A, Revised Civil Statutes of Texas, 1925, are hereby repealed. All other laws and parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only.

Mr. Watson offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to H. B. 727 by adding a new sub-section
(18) There are exempted from the taxes imposed by this Act the purchase price from the sale of and the storage, use or other consumption in this State of all household soap, soap products and synthetic detergent.

The amendment by Mr. Watson was lost.

Mr. Caldwell offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 by adding to paragraph (1) of Article 40.04 a new subparagraph (oo), to read as follows:

“(oo) The sale at retail or rental of any book.”

A record vote was requested on the amendment by Mr. Caldwell.

The amendment by Mr. Caldwell was lost by the following vote:

Yeas—38

Alaniz
Bailey
Barlow
Blaine
Caldwell
Cannon
Carriker
Collins
Dewey
Dickhardt
Dillon
Dunn
Haring
Harrison
Hinson
Hollowell
Hughes
Hughes of Grayson
Johnson of Bexar

Nays—101

Adams of Lubbock
Adams of Titus
Allen
Andrews
Atwell
Bancroft, Mrs.
Barnes
Bartram
Bass

Connell
Cory
Cotter
Cowen
Cowles
Crews
Curington
Dungan
Ehrle
Fairchild
Fletcher
Foreman
Garrison
Gibbens
Glaudens
Ginsing
Glover
Guffey
Hall
Harding
Haynes
Healy
Huebner
Hughes of Dallas
Isaacks, Miss
James
Jamison
Jarvis
Johnson of Dallas
Johnson of Bell
Johnson of Kenedy

Kilpatrick
Lack
Lalimer
La Valle
Leaverton
Lewis
Longoria
McCoppin
McGregor

of McLennan
of El Paso

Narciss—88

Adams of Titus
Allen
Andrews
Atwell
Bancroft, Mrs.
Barnes
Bartram
Bass

Martin
Miller
Moore
Murray
Mukicher
Niemeeyer
Nugent
Osborn
Peeler
Petty
Pflug
Proctor
Price
Quinlan
Rapp
Ratcliff
Read
Richards
Roberts of Dawson
Rosson
Saadah
Schrader
Slack
Smith of Bexar
Smith of Jefferson
Snelson
Spilman
Stewart
Stewart
Tulce
Trevino
Tumble
Walker
Water
Welch
Wilson of Trinity
Wilson of Potter
Woods
Yezak

Present—Not Voting

Shipley

Absent

Burgess
Stewart

de la Garza

of Wichita
Ward
Spear

Absent—Excused

Cook

Oliver

Floyd

Mr. Shipley (present), who would vote "yea", with Mr. Cook (absent) who would vote "nay".
REASON FOR VOTE
H. B. 727
I voted "Yea" on the Caldwell Amendment because I feel that we should never put an undue tax burden on books and newspapers. Freedom of the Press demands this.

SCOTT BAILEY.

Mr. Wilson of Potter offered the following amendment to the amendment by Mr. Wilson of Trinity:

Amend the Amendment to HB 727 by adding under Article 40.07 (2), after the words "Three Dollars ($3) for each permit," a comma, and the words "provided the vending machine sales are to be twenty four (24) cents or less."

The amendment by Mr. Wilson of Potter was adopted.

Mr. Eckhardt offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 as follows:

(1) Insert immediately after the enacting clause a new Section to be numbered appropriately and to read as follows:

"Findings of Fact.

The Legislature of the State of Texas finds and determines that there is an urgent and imperative need to broaden the base of the tax structure by the imposition of a tax on the sale and use of certain types of tangible personal property in order to provide necessary revenue to retire the deficit and defray the increased costs of educational, welfare and other governmental programs vital to the health, safety, welfare, and general good of the people of Texas. The Legislature of the State of Texas finds further, upon a comprehensive examination of the operations of sales and use taxes in other states, and the writings and statements of all recognized authorities in the field of taxation, that a sales and use tax is regressive in nature, in that the relatively heaviest burden of such tax falls on the lowest income groups of taxpayers and such burden declines appreciably as the income of taxpayers increases. In order to equalize this inequitable distribution of tax burden, the Legislature of the State of Texas finds and determines that there is an equally urgent and imperative need to include as an integral part of the sales and use tax a regresivity compensation factor which would equalize the burden of this tax among the various income groups of taxpayers in the State of Texas."

(2) Insert in the proper place a new Section to be numbered appropriately and to read as follows:

"Regresivity Compensation Factor.

(1) In order to equalize the burden of the sales and use tax on various income groups of taxpayers there is hereby imposed a tax on the adjusted gross income as reported for Federal Income Tax purposes of every person in this State. Such tax shall be at the following schedule of rates:

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Rate of Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.00 to $4,600</td>
<td>No Tax</td>
</tr>
<tr>
<td>$4,601 to $5,600</td>
<td>.06%</td>
</tr>
<tr>
<td>$5,601 to $7,600</td>
<td>.10%</td>
</tr>
<tr>
<td>$7,601 to $10,600</td>
<td>.15%</td>
</tr>
<tr>
<td>$10,601 to $15,000</td>
<td>.20%</td>
</tr>
<tr>
<td>$15,001 to $20,000</td>
<td>.25%</td>
</tr>
<tr>
<td>$20,001 to $25,000</td>
<td>.30%</td>
</tr>
<tr>
<td>$25,001 to $30,000</td>
<td>.35%</td>
</tr>
<tr>
<td>$30,001 to $35,000</td>
<td>.40%</td>
</tr>
<tr>
<td>All income in excess of $35,000</td>
<td>.45%</td>
</tr>
</tbody>
</table>

(2) Such tax shall be due and payable on or before April 15th of each year.

(3) The Comptroller shall have authority to promulgate rules and regulations for the administration and collection of the regresivity compensation formula imposed hereunder.

Mr. Ehrle moved to table the amendment by Mr. Eckhardt.

A record vote was requested.

The motion to table the amendment by Mr. Eckhardt prevailed by the following vote:

Yeas—125

Adams of Lubbock Adams of Titus
Mr. Preston (present), who would vote "Yea", with Mr. Spears (absent) who would vote "Nay."

REASON FOR VOTE

I voted against the Eckhardt amendment to H. B. 727 because it is a gross receipts tax on income and is as equally inequitable as a general retail sales tax. A general retail tax is in effect a gross receipts tax on low income families, of which there are many—a majority of our families—because these families must spend all they earn for the necessary object of survival. Their gross earnings should not be taxed, nor should others be.

NEIL CALDWELL

MESSAGE FROM THE SENATE

Austin, Texas, April 20, 1961
Hon. James A. Turman, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to Senate Bill No. 69 by the Viva Voce vote.

Sir: I am directed by the Senate to inform the House that the Senate has passed the following:

H. B. No. 451, Creating juvenile boards in Comal, Hays, Caldwell, Austin and Fayette Counties; and declaring an emergency.
April 20, 1961  
HOUSE JOURNAL 1295

H. B. No. 533, Providing a General Class B Wholesaler's Permit and a Local Class B Wholesaler's Permit and fixing the authorities and privileges granted to the holder of each and fixing the annual State fee to be charged by each; providing for the issuance of a Brewer's Permit to the holder of a Manufacturer's License; and declaring an emergency.

H. B. No. 531, Granting authority to the Game and Fish Commission of the State of Texas to make regulations prescribing the means, method or device and number(s) of any fish taken from the fresh waters of the Texas portion of Lake Texoma located in Cooke and Grayson Counties, Texas; and declaring an emergency.

H. B. No. 483, To provide for the abolition of the office of county superintendent in certain counties of the State; and declaring an emergency.

Respectfully,
CHARLES A. SCHNABEL,  
Secretary of the Senate.

RECESS

Mr. Wilson of Potter moved that the House recess until 2:30 o'clock p.m. today. The motion prevailed.

In accordance with the motion to recess the House at 12:41 o'clock p.m., took recess until 2:30 o'clock p.m. today.

AFTERNOON SESSION

The House met at 2:30 o'clock p.m. and was called to order by the Speaker.

HOUSE BILL NO. 727 ON PASSAGE TO ENGROSSMENT

The House resumed consideration of pending business, same being H. B. No. 727, Relative to imposing an excise tax in the amount of 2 o/c or the purchase price or certain retail sales of personal property and a use tax in the amount of 2% of the purchase price on the use of certain personal property.

The bill was read second time on this morning with the amendment by Mr. Wilson of Trinity pending.

Mr. Allen offered the following amendment to the amendment by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 by adding to page 10 line 21 under section 5, subsection A (5) by changing the period to a comma and adding the following "provided, however, that the retail collector can retain 2% of the total amount of the tax collected for administrative costs."

ALLEN,  
JARVIS.

The amendment by Mr. Allen was adopted.

Mr. McIhany offered the following amendment to the amendment by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727, as amended, by deleting (c) of (1) under 46.04 of Exemptions and substituting in lieu thereof the following:

"The sale at retail or use of farm machinery, farm equipment or farm supplies exclusively used or employed on farms or ranches in the production of food for human consumption."

The amendment by Mr. McIhany was lost.

Mr. Jarvis offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend amendment to House Bill 727 under article 40.04 (1), (d) by adding on page 8 of the printed amendment on line 4 of subsection (d) the figure ",11" between the figure 10 and the word "and."

The amendment by Mr. Jarvis was adopted.

Mr. Haring offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill 727, page 11, by setting up a new subsection to read as follows:

(2) There are exempt from taxes imposed by this act the purchase price from the sale of house-hold furnishings when purchased for individual use in private homes.

The amendment by Mr. Haring was lost.
Mr. Stewart of Galveston offered the following amendment to the amendment by Mr. Wilson of Trinity:

Amend amendment to H. B. 727 by adding the following sections at the end of said amendment:

"Section 12. Chapter 12 of Acts 1959, 56th Legislature, Third Called Session, Chapter 1 (codified as Chapter 12, FRANCHISE TAX, Title 122A, Taxation-General) is amended to hereafter read as follows:

"Chapter 12
CORPORATION INCOME TAX

Article 12.01 Short Title

This Article shall be known and may be cited as the 'Corporation Income Tax Act.'

Article 12.02 Definitions

The provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of 1925 and of Acts 50th Legislature, 1947, Chapter 359, on the interpretation of statutes shall apply to this Act. In addition, in this Act, unless the context clearly indicates a different meaning:

(a) 'Corporation' includes a corporation having a capital stock, a joint-stock association or limited partnership, either organized under the laws of this State, the United States, or any other state, territory, or foreign country or dependency, or carrying on activities in this State, or owning property in this State, or in the name of itself or any person, partnership, association, limited partnership, joint-stock association, or corporation.

(b) 'Person' means every natural person, association or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term 'person' as applied to associations means the partners or members thereof, and, as applied to corporations, the officers thereof.

(c) 'Carrying on activities in this State,' includes every act, power, or privilege exercised or enjoyed in this State as an incident to or by virtue of, the powers and privileges acquired by the nature of the corporation organization.

(d) 'Unitary Business' for the purposes of this Chapter shall mean concerns doing one kind of business, component parts of which are too closely connected and necessary to each other to justify provision or separate consideration as separate units, as opposed to 'dual' or 'multi-form' businesses having separate units capable of being maintained as independent business producing owned property.

Article 12.03. Imposition of Tax

Every corporation, except those listed in Article 12.07, carrying on activities in this State or owning property in this State by or in the name of itself or any person, partnership, joint-stock association or corporation is subject to and shall pay a State tax on taxable income derived from sources within this State, as hereinafter provided.

The tax hereby imposed shall be at the rate of ten percent (10%) on taxable income.

The tax hereby imposed is in addition to all taxes now imposed on any corporation under the provision of existing laws.

Article 12.04. Credits Against The Tax

A copy of the original receipts of a corporation for the payment of State and local ad valorem taxes to local government units of the State of Texas which receipts are for payment of taxes which are currently due and payable during the reporting period (and not including receipts for payment of delinquent taxes, penalties or interest), shall be accepted in payment of this corporation income tax; providing, however, that no more than one-third of the amount shown by such receipts shall be accepted in payment of this corporation income tax; and further provided, that such one-third amount shall not be accepted from any corporation in excess of fifty percent (50%) of that corporation's total income tax liability.

Article 12.05. Computation Of The Tax

The tax imposed by this Chapter shall be applied to the taxable income earned during the taxable year as allocated by Article 12.06.

(a) 'Taxable Income' means the net income for the taxable year as returned to and ascertained by the Federal Government. 'Taxable Income' is, however, subject to any
correction thereof for fraud, evasion or error, as finally ascertained by the Federal Government. Additional deductions shall be allowed from taxable income on account of any dividends received from other corporations but only to the extent that these dividends are included in taxable income as returned to and ascertained by the Federal Government and for all income from obligations of the Federal Government. No deduction shall be allowed for any Federal or State income or excess profits tax whatsoever.

(b) "Taxable year" means the calendar year unless the corporation uses a fiscal year or other period for Federal Corporate Income tax purposes. In such cases, taxable year means the period used by the corporation in determining income for Federal tax purposes.

(c) An affiliated group of corporations who file a consolidated report with the Federal Government for corporate income tax purposes may also file a consolidated report for the tax levied by this Chapter. Any corporation that has filed a separate return with the Federal Government must also file a consolidated report under this Article. Any affiliated group of corporations filing a consolidated return under this Article shall pay the tax based upon the consolidated income reported to the Federal Government. In addition, all such group of corporations shall pay an additional five percent (5%) of the tax on said consolidated income for the privilege of filing a consolidated report.

Article 12.06. Allocation Of Income

Each corporation liable for payment of this tax shall determine the portion of its entire taxable income which is derived from sources within this State and is taxable by the State of Texas by multiplying same by an allocation factor which shall be the percentage which the gross receipts from its business done in Texas is to the total gross receipts of the corporation from its entire business.

For the purpose of this Article, the term "gross receipts from its business done in Texas" shall include:

(a) Sales of tangible personal property located within Texas at the time of the receipt of or appropriation to the orders where shipment is made to points within the State.

(b) Sales of tangible personal property located without this State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State.

(c) Services performed within Texas.

(d) Rentals from property situated, interest from investments, and royalties from the use of patents or copyrights within Texas, and

(e) All other business receipts within Texas.

For the purpose of this Article, the term "total gross receipts of the corporation from its entire business" shall include all of the proceeds of all sales of the corporation's tangible personal property, all receipts from services, all interest from investments, all rentals, all royalties and all other business receipts, whether within or outside of Texas.

Provided, however, that the Comptroller may authorize any business that is not a unitary business, as defined herein, to use separate accounting in lieu of the aforesaid formula. In such cases the Comptroller must find that the corporation is not a unitary business and that it maintains an accounting system adequate to enable it to determine by separate accounting the amount of income earned in Texas.

Article 12.07. Corporations Exempt

The following corporations shall be exempt from the tax levied by this Chapter:

(a) All corporations paying a tax under the provisions of Chapter 11, Title 122A.

(b) All corporations liable for taxes under Articles 7064 and 7064a, Revised Statutes of Texas.

(c) All State and national banks and all savings and loan, and building and loan associations, until such institutions are uniformly taxed under the Federal and State constitutions and statutes.

(d) All corporations having no capital stock and organized for the exclusive purpose of promoting the public interest, of any county, city or town or other area within this State and corporations organized for...
the purpose of religious worship or for providing places of burial not for private profit, and corporations organized for the purpose of holding agricultural pursuits.

(e) Any corporation organized as a railway terminal corporation and having no annual net income from the business done by it.

(f) All corporations to which the Texas Non-Profit Corporation Act is applicable.

(g) Any mutual investment company registered under the Federal Investment Company Act of 1940, as amended, which holds stocks, bonds, or other securities of other companies solely for mutual investment purposes.

Article 12.08 Reports

(a) For the purpose of ascertaining the amount of tax payable under this Chapter, every corporation liable to pay tax under this Chapter shall transmit to the Comptroller of Public Accounts upon a form prescribed, prepared, and furnished by the Comptroller, an annual report which shall set forth:

(1) A true copy of the corporation's return to the Federal Government for Federal Income Tax purposes of the taxable income arising or accruing in the taxable year next preceding, or such portion of said return as the Comptroller may designate;

(2) If no return was filed with the Federal Government, the report made to the Comptroller shall show such information as would have been contained in a return to the Federal Government had one been made; and

(3) Such other information as the Comptroller may require.

(b) For corporations whose fiscal year ends on December 31, said report shall be due within fifteen days after the fifteenth day of April of each year.

(c) For corporations whose fiscal year ends on a date other than December 31, said report shall be due within thirty (30) days after the report to the Federal Government is due or would be due if such report were made.

(d) If the time for filing a report is extended by the Federal Government, the corporation shall notify the Comptroller of such extension and the time for filing reports under this Chapter shall be extended to thirty (30) days after the report to the Federal Government is due.

(e) If the amount of the taxable income returned by any corporation to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States, the corporation, within thirty (30) days after the receipt of such change or correction, shall make a corrected report showing such finally changed or corrected taxable income upon which the tax is required to be paid to the United States.

Article 12.09 Payment Of The Tax

(a) The person making the return herein required shall, at the time of filing such return, pay to the Comptroller the amount of tax herein imposed. If such tax is not paid on or before the last day for filing a report, it shall be deemed delinquent, and the taxpayer shall be subject to the penalties and interest imposed by this Chapter. If the tax computed by the Comptroller is greater than the amount of tax reported on the return filed with the Comptroller, the Comptroller shall notify the person filing such return of the deficiency. The taxpayer shall be allowed thirty (30) days after notice in which to pay the difference between the amount due and the amount that has been paid, provided that such difference shall be subject to interest as hereafter provided. If such deficiency is not paid within thirty (30) days after notice, the amount of the deficiency shall be subject to the penalties hereinafter provided.

(b) The amounts collected under the provisions of this Chapter shall be deposited in the General Revenue Fund.

Article 12.10 Penalties And Interest

(a) The amount of all taxes imposed under the provisions of this Chapter that are not paid on or before the date due shall bear a penalty of two percent (2%) for late payment. An additional penalty of eight percent (8%) shall be assessed if payment is made more than ten (10) days following the time above provided.
(b) If any amount of the tax should not be paid within sixty (60) days following the date it is due, it shall, in addition to the above provided penalties, bear interest at the rate of six percent (6%) per annum beginning sixty (60) days following the date due; such interest shall be computed at the rate of one-half per cent (½%) per month or part of a month, but compounded annually, until such tax, penalties, and interest is paid.

(c) In case a corporation fails to file a report of correction of income taxable by the Federal Government which results in an increase in taxable income within the time prescribed there shall be added to the tax a penalty of Five Dollars ($5) for every day during which the corporation is in default.

Article 12.11 Forfeiture

Any corporation, either domestic or foreign, which shall fail to pay any income tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, or who shall fail to file any report provided for in this Chapter when the same shall become due, shall, thirty (30) days following notice of tax delinquency by the Comptroller, become liable in addition to the penalties previously set forth, to the forfeiture of its right to do business in this State, which forfeiture shall be consummated without judicial ascertain­ment by the Secretary of State entitling the corporation to the margin of the records kept in his office relating to such corporation the words, 'right to do business forfeited,' and the date of such forfeiture. Any corporation whose right to do business has been forfeited shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or permit of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this Chap­ter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which

shall include all income taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, while such forfeiture by any such directors or officer of any corporation, which shall include all income taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporations were partners.

When all taxes, interest, and penalties have been paid, the Com­ptroller shall notify the Secretary of State who shall reinstate the corporation's right to do business by cancelling the words 'right to do business forfeited' upon his records and endorsing thereon the word 'revived,' and the date of such re­vival.

In the case the right to do business for any corporation shall be main forfeited for longer than one hundred twenty (120) days, the Comptroller shall certify the fact to the Attorney General. Upon receiving such certification, the Attorney General shall forthwith institute suit against such corporation, if a domestic corporation, or to forfeit the charter of the corporation, if a foreign corporation.

The failure of any corporation whose right to do business has been forfeited to have said right revived within one hundred twenty (120) days shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation, or of the permit of such foreign corporation.

Article 12.12 Administration

(a) This Chapter shall be admin­istered according to the previous
of Chapter 1 of Title 122A, Taxation-General. The Comptroller shall be responsible for the administration of this Chapter, and he is hereby authorized to:

(1) Make and enforce such reasonable rules and regulations not inconsistent with the provisions of this Chapter as he may deem necessary.

(2) Appoint such agents and employees as he may deem necessary for the proper enforcement and administration of this Chapter.

(3) Make such investigations as are necessary for the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any corporation subject to this Chapter. The Comptroller, or any officer or employee of the Comptroller, or any officer or employee of any corporation, or a duly authorized representative of a corporation, designated in writing, may conduct investigations and may examine any books, papers, records, or memoranda bearing upon the business of such corporation if it is necessary for the purpose or the corporation or agent thereof, or it is necessary to properly record the fact that the corporation has a valid permit.

(4) Estimate the amount of tax due by such tests as he may deem adequate if the corporation shall fail to keep such books and records as are necessary to properly record the amount of tax liability. Such estimate shall be prima facie evidence of the tax due.

(5) All information derived or obtained by the attorney general or the Comptroller from any such inspection of the books and records as authorized in this Chapter and all information secured, derived or obtained by the attorney general or the Comptroller from any record, report, instrument, or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential and no record, report, or information secured, derived, or obtained by the attorney general or the Comptroller under the terms of this Chapter shall be open to public inspection. Nothing herein contained shall be construed to prevent the delivery to a taxpayer or his duly authorized representative, of a copy of any report or other paper filed by him pursuant to the provisions of this Chapter; the publication of statistics so classified as to prevent the identification of a particular report and the items thereof, the use of such records, reports, or information secured, derived, or obtained by the attorney general or the Comptroller under the terms of this Chapter in an action against the taxpayer or any other corporation for a penalty or any tax due under any provision of Title 122A of the Revised Civil Statutes of Texas; or the furnishing at the discretion of the Comptroller, of any information disclosed by said records, reports, or files to any official of any other state or of the United States, who shall be concerned with the administration of any similar tax in that state or the United States; the Comptroller, or his duly authorized agent, from furnishing information concerning whether or not a retail or wholesale dealer has a valid permit.

(a) All notices mailed to the taxpayer under the provisions of this Chapter, if mailed to him at his last known address as shown on the records of the Comptroller, shall be sufficient for the purposes of this Chapter.

Article 12.13 Settlement

(a) All taxes due under this Act shall be settled by the Comptroller.

(b) If any corporation taxable under this Act neglects or refuses to make any report and payment of tax required by this Act, the Comptroller shall estimate the tax due by the corporation and settle the amount due by it for taxes, penalties and interest thereon, from which settlement there shall be no right of review or appeal, but the Comptroller may require a report to be filed, and thereafter make a settlement based upon such report and cancel the estimated settlement.

(c) If within six years after the due date for tax of any corporation liable for taxes under this Act, the
The Comptroller shall send to the taxpayer a written notice at least forty-five (45) days, but not more than sixty (60) days after receipt of a petition for settlement, setting forth the date for hearing the petition for settlement. In making this order the Comptroller shall take into account the serious affairs; however, he may examine any witness on any relevant matter. The Comptroller may prescribe reasonable and uniform methods for keeping of records and books of corporations taxable under the provisions of this Act.

Article 12.15 Books and Records.

Every corporation taxable hereunder shall keep records and books in this State and other pertinent papers and documents for a period of seven (7) years prior to the current calendar year. Such books and records, and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the Comptroller, or his duly authorized agents and employees. The Comptroller may prescribe reasonable and uniform methods for keeping of records and books of corporations taxable under the provisions of this Act.

Article 12.16 Criminal Offenses.

(a) Any person who violates the provisions of Article 12.12(b) by divulging information made confidential under that Article shall be guilty of a misdemeanor and shall be punished by confinement in the county jail not exceeding six (6) months, or by a fine of not less than One Hundred Dollars ($100) not more than Five Hundred Dollars ($500), or by both such fine and incarceration.

(b) Any person who shall refuse to permit the Comptroller to examine the books, papers, and records of any taxpayer liable to pay a tax under this Chapter is guilty of a misdemeanor and, upon conviction thereof, be sentenced to pay a fine not exceeding One Thousand Dollars ($1000), or by confinement in the county jail not exceeding six (6) months, or both. This is in addition to any other penalties imposed by this Chapter.
Chapter 6
Texas Motor Vehicle Use Tax.

Article 6.01 Title of Act.
This act shall be known as the "Texas Motor Vehicle Use Tax."

Article 6.02 Definitions.
(1) The terms "sale" and "sales" as herein used shall include installment and credit sales, and the exchange of property as well as the sale thereof for money, every closed transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(2) The term "retail sale" or "retail sales" as herein used shall include those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use.

(3) The term "motor vehicle" as used in this Act shall mean every self-propelled vehicle, or by which any person or property is or may be transported upon a public highway, including trailers and semitrailers. It shall not mean any device moved only by human power or used exclusively upon stationary rails or tracks and shall not include farm machinery or farm trailers or roadbuilding machinery or any self-propelled vehicle used exclusively to move any of the three (3) immediately preceding vehicles.

Article 6.03 Use Tax Imposed.
There is hereby levied upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State or by a person, firm or corporation domiciled or doing business in this state a use tax equal to two percent of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the resident, person, firm or corporation operating said motor vehicle upon the public highways of this State.

Article 6.04 New Resident Tax.
When a new resident of the state makes application for the initial certificate of title in this State upon which the tax imposed by Art. 6.03 has not been paid, motor on a particular motor vehicle he shall pay a use tax on that vehicle in the sum of fifteen dollars ($15.00).

Article 6.05 Exemptions.
There is hereby exempted from the taxes imposed by this Chapter:
(a) Motor vehicles purchased by a dealer licensed under Article 30.06 of Chapter 29, as amended, Title 122A—"Taxation-General" and upon which the "Texas Business Invoice Tax" imposed by that Chapter has been paid. The Tax Assessor and Collector shall accept an invoice bearing the name and address of a dealer domiciled and operating in the State of Texas as prima facie evidence that the motor vehicle described by such invoice is exempt under this subsection.
(b) Motor vehicles previously titled in this State, which are a gift from one resident of the State to another resident of this State.
(c) Motor vehicles previously titled in this State, sold or traded by one resident of this State to an other resident of this State.

Article 6.06 Collection of Taxes.
The taxes levied in this Chapter shall be collected by the Assessor and Collector of Taxes of the county in which any such motor vehicle is first registered or first transferred after such sale; the Tax Collector shall refuse to accept for registration or for transfer and shall refuse to issue a Certificate of Title for any motor vehicle until the tax thereon is paid or until proof is presented that the motor vehicle is exempt under the provisions of Article 6.06 of this Chapter.

Article 6.07 Receipts; Disposition of Collections.
The Tax Assessor and Collector shall issue a receipt prescribed by the Comptroller of Public Accounts, to the person paying the taxes imposed by this Chapter. On the first day of each month the Tax Assessor and Collector shall forward fifty percent (50%) of the money collected from the taxes imposed by this Chapter during the preceding month to the Comptroller of Public Accounts in such a manner and in such form as the Comptroller shall prescribe. The Tax Assessor and Collector shall retain fifty percent...
April 20, 1961

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(50% of the taxes collected as fees of office to be paid into the officers' salary fund of the county as provided by General Law.

Section 4. Article 5.01 of Chapter 5 of Acts 1959, 56th Legislature, Third Called Session, Chapter 1 is amended to read as follows:

"Art. 5.01 Occupation Tax on Sulphur Producers. Amount of Tax.
Sulphur Producers: Each person, firm, association, or corporation who owns, controls, manages, leases, or operates any sulphur mine, or mines, wells or shafts, or who produces sulphur by any method, system or manner within this State shall make quarterly, on the first day of January, April, July and October of each year, a report to the Comptroller in this State, or if such person be other than individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe, showing the total amount of sulphur produced within this State by said person during the quarter next preceding, and at the time of making such report shall pay to the Treasurer of this State an occupation tax for the quarter ending on said date an amount equal to one Dollar and Three Cents ($1.03) per long ton, or fraction thereof, of all sulphur produced by said person within the State of Texas during said quarter."

Section 5. Chapter 24 of Acts 1959, 56th Legislature, Third Called Session, Chapter 1 is amended, in part, to hereafter read as follows:

Chapter 6
Texas Motor Vehicle Use Tax
One fourth (¼) allocated to the Available School Fund, three fourths (¾) allocated to the Omnibus Tax Clearance Fund.

Chapter 12
Corporation Income Tax: All allocated to the General Revenue Fund.

Chapter 23
Hotel Occupancy Tax: As allocated to costs of Texas Industrial and tourist development and State Parks by the Legislature in the biennial appropriation bill.

Section 16. Amend Chapter 23 of Acts 1959, 56th Legislature, Third Called Session, Chapter 1 "Hotel Occupancy Tax" by adding thereto another Article numbered Art. 23.08, as follows:

"Art. 23.08 Proceeds From Tax. The net funds collected from the tax levied by this Chapter shall be appropriated by the Legislature for the development of industry in Texas; for the encouragement and development of the tourist industry in Texas, and for the development and operation of Texas State Parks.

Section 17 Savings Clause. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit or penalty. Taxes incurred under any law repealed by this Act are an obligation within the meaning of this Section. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

Section 18 Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

Section 19. Repealer. Article 19.02 of Chapter 19, Acts 1959, 56th Legislature, Third Called Session, Chapter 1 (Oilwell Servicing Tax) is repealed. Chapters 4, 12, and 20 of Acts 1959, 56th Legislature, Third Called Session, Chapter 1, as originally enacted, are repealed. That part of Chapter 24, Acts 1959, 56th Legislature, Third Called Session, Chapter 1, as is in conflict with Section 14 of this Act is repealed, and all laws or parts of laws in conflict herewith to the extent of such conflict only.

Mr. Quilliam moved to table the amendment offered by Mr. Stewart of Galveston.
A record vote was requested on the motion to table.

The motion to table the amendment offered by Mr. Stewart of Galveston to the amendment offered by Mr. Wilson of Trinity prevailed by the following vote:

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McGregor of Wichita
McIlhenny of El Paso
McNabb Watson
Marrs Wells
Moore Wheatley
Mullen Whitley
Mutchler Yeak

Absent
Buchanan Spears
Burchett Ward
Guffey

Absent—Excused
Cook Oliver
Fred Floyd
Mr. Korioth offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend Author's Amendment to H. B. 727 by adding after Article 40.38 the following Articles:

CORPORATION INCOME TAX

Article 40.39 DEFINITIONS. The provisions of Articles 10, 11, 12, 14, 22 and 23. Revised Civil Statutes of 1925 and of Acts 50th Legislature, 1947, Chapter 359, on the interpretation of statutes shall apply to this act. In addition, in this act, unless the context clearly indicates a different meaning:

a. "Taxpayer" means any corporation liable for a tax under this act.

b. "Corporation" includes a corporation having a capital stock, a joint stock association or limited partnership, whether organized under the laws of this State, the United States, or any other state, territory or foreign country or dependency, and carrying on activities in this State, or owning property in this State by or in the name of itself or of any person, partnership, association, or corporation.
c. "Taxable year" means the calendar year unless the taxpayer is authorized by the Comptroller to use some other twelve month period as its fiscal year in which case it means that twelve month period.

d. "Taxable income" means the taxable income for the taxable year as returned to and ascertained by the Federal Government in the case of a corporation participating in the filing of consolidated returns to the Federal Government. "Taxable income" means the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years. "Taxable income" is, however, subject to any correction thereof for fraud, evasion or error, as finally ascertained by the Federal Government. Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that these dividends are included in taxable income as returned to and ascertained by the Federal Government and for all income from obligations of the Federal Government and for all income from dividends on property located or having a situs in, into or from this State, or derived from sources within this State, or derived from any other taxable income derived from any sources within this State, in proportion to the taxable income of such business or agency as hereinafter provided.

Art. 40.41 RATES. The tax assessed by this act is hereby imposed on corporations at the rate of three per centum (3%) of the entire taxable income of any taxable year.

Art. 40.42 ADMINISTRATION OF TAX.

a. The Comptroller of Public Accounts is hereby charged with the enforcement of the provisions of this act, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations not inconsistent with this act relating to any matter or thing pertaining to the administration and enforcement of the provisions of this act, and the collection of taxes, penalties and interest imposed by this act. The Comptroller is required to have these rules and regulations printed and to distribute them to any taxpayer upon request.

b. The Comptroller, or any agent authorized in writing by him, is hereby authorized to examine the books, papers and records, and to investigate the character of the business of any taxpayer, in order to verify the accuracy of any return made, or if no return was made by the taxpayer, to ascertain and settle the tax imposed by this act. Every taxpayer is directed and required to give to the Comptroller or his duly authorized agent, the means, facilities and opportunity for such examinations and investigations as are hereby authorized. Any information gained as a result of any reports, investigations or verifications required to be made by this act shall be confidential, except for legal purposes, and any person divulging such information is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (100) dollars, or to undergo imprisonment for not more than six (6) months, or both.

c. The powers conferred by this act upon the Comptroller relating to the administration or enforcement of this act shall be in addition to, but not exclusive of, any powers
shall be found by multiplying this one-third by a fraction whose numerator is the value of the corporation's tangible property situated within this State and whose denominator is the value of all the corporation’s tangible property wherever situated;

(2) Of one-third, such portion shall be attributed to this State as shall be found by multiplying this one-third by a fraction whose numerator is the expenditure of the corporation for wages, salaries, commissions and other compensation to its employees, and assignable to this State, as hereinafter provided, and whose denominator is the total expenditures of the corporation for wages, salaries, commissions and other compensation to all its employees;

(3) Of the remaining one-third, such portion shall be attributed to this State as shall be found by multiplying this one-third by a fraction whose numerator is the amount of the taxpayer's gross receipts from property and activities assignable to this State, as hereinafter provided, and whose denominator is the amount of the taxpayer's gross receipts from all its property and activities.

In cases where the corporation does not have the property, activity or expenditure within this State so that only two of the foregoing three rules can be made applicable, the taxable income of the corporation shall be divided into two equal parts only, each of which shall be allocated in accordance with one of the remaining two rules. If only one of the rules can be made applicable, the part of the taxable income allocable to activities carried on within this State shall be determined solely by that rule.

The amount assignable to this State of expenditures of the corporation for wages, salaries, commissions or other compensation to its employees shall be such expenditures of the taxable year as represent the wages, salaries, commissions or other compensation of employees to the extent of services rendered or work performed in the State, and similar expenditures to employees not chiefly situated at, connected with, or sent out from, premises for the trans-
The amount of the corporation's gross receipts from property and activities assignable to this State shall be: (1) the amount of its gross receipts for the taxable year from services rendered, work and contracts performed, and sales made, in this State, and all other gross receipts except those negotiated or affected in behalf of the corporation by agents or agencies situated at, connected with, or sent out from, premises for the transaction of business maintained by the corporation outside the State, and except rentals and royalties and interest and dividends; (2) rentals or royalties from property situated, or from the use of patents within the State; (3) dividends and interest, except those negotiated or affected in behalf of the corporation by agents or agencies situated at, connected with, or sent out from, premises for the transaction of business maintained by the corporation outside the State; and (4) dividends and interest attributable to the business conducted on premises maintained by the corporation outside the State.

Art. 40.44. Allocation of Income—Insurance And Surety Companies. In the case of corporations carrying on activities as insurance or surety within and without this State, the taxable income from such corporations derived from sources outside this State for the taxable year shall be determined by multiplying taxable income by a fraction of which the numerator is the gross premiums received from activities carried on in this State, and of which the denominator is the amount of the gross premiums received from all its activities everywhere.

a. "Gross Premiums" means the total of dues, fees, and premiums stated in the policy contracts, and includes gross premiums of every character and description received during the taxable year from all underwriting activities, whether the premiums were received in money or in the form of notes, credits or any other substitute for money, less the following deductions:

(1) All premiums returned on policies cancelled or not taken;
(2) In the case of stock companies with participating features, an additional deduction for that portion of the premium returned to the policyholders;
(3) In the case of life insurance companies, an additional deduction for dividends declared and actually used by policyholders in payment of renewal premiums.

b. "Gross premiums received from activities carried on in this State" means gross premiums received from policies and annuities written in property or risks located or resident in this State, whether the premiums were collected in this State or else where.

Art. 40.45. Blank Forms For Returns. Blank forms of returns shall be prepared and furnished by the Comptroller. The Comptroller shall, before the 15th day of January in each and every year mail a blank form to each and every taxpayer who or which from any record or information available to the Comptroller may be required to furnish an income tax return, and it shall deliver into the hands of the county assessor of each and every county in this state a sufficient supply of the same to be delivered upon application to such taxpayers as may apply for the same.

Failure upon the part of any taxpayer to receive a blank form from the Comptroller shall not relieve him or it from any obligation to make and file such return or from any penalty on account thereof.

Income returns shall, so far as may be, set forth the same or similar items as called for in the black forms of return prescribed by the United States internal revenue for the enforcement of the "Revenue Act," together with such other facts as may be necessary for the proper enforcement of this act.

Art. 40.46. Returns And Payments. a. All returns shall be made and filed with the Comptroller on or before the 15th day of April in each year. In addition to the completed return form provided by the state, the taxpayer shall also submit:

(1) A true copy of the taxpayer's return to the Federal Government of the annual taxable income arising or accruing in the taxable income arising or accruing in the taxable year, or such part or portion of said return as the Comptroller may designate;
(2) If no return was filed with the Federal Government, then the
taxpayer shall submit a report to the Comptroller which shall show such information as would have been contained in a return to the Federal Government had one been made, and,

(3) Such other information as the Comptroller may require.

b. The failure of any taxpayer liable to pay tax under this act to procure or receive any return form shall not excuse it from making a return.

c. Every taxpayer, upon the date its return is required herein to be made, shall pay to the Comptroller not less than one-half of the tax due to the State by it for the year, and the remaining one-half of the tax shall be paid within the ninety days next succeeding.

d. The amount of all taxes imposed under the provisions of this act not paid on or before the times as above provided shall bear interest at the rate of six per cent per annum from the date they are due and payable until paid, except that if the taxable income has been or is increased by the Commissioner of Internal Revenue or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty days after the taxpayer received notice of the change of income until paid.

e. If any member of an association or officer of a corporation neglects or refuses to make any report or return, the Comptroller shall, in addition to an additional ten per cent of the amount of the tax to the tax determined to be due.

f. If a taxpayer closes its fiscal year not upon the thirty-first day of December but upon some other date and makes a return to the Federal Government as of that other date or would so return if it were to make a return to the Federal Government, the taxpayer shall certify this fact to the Comptroller, and shall make the annual return herein required within thirty days after its return to the Federal Government is due or would be due were it to be required of such taxpayer, subject, in all other respects to the provisions of this act.

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g. If the taxpayer claims that the return made to the Federal Government was inaccurate, the amount claimed by it to be taxable income under this act and the basis of such claim of inaccuracy shall be fully specified.

Art. 40.47 Retention of Records by Taxpayers: Penalty. Each taxpayer shall maintain and keep for a period of three years after a return is filed under this act, such record or records of its business and taxable income arising or accruing within this State for the period covered by such return and other pertinent papers as may be required by the Comptroller.

Any corporation or officer thereof violating any of the provisions of this section is guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not exceeding one thousand (1000) dollars, or to undergo imprisonment for not more than six (6) months, or both.

Art. 40.48 Consolidated Returns. The Comptroller shall not permit any corporation owning or controlling, directly or indirectly, any of the voting capital stock of another corporation or of other corporations subject to the provisions of this act to make a consolidated return showing the combined taxable income.

Art. 40.49 Extension of Time to File Returns. The Comptroller may, upon application made to him in such form as he shall prescribe on or prior to the last day for filing any annual return and upon proper cause shown, grant to the taxpayer required to file such return an extension of not more than sixty (60) days, or both, within which the return may be filed, and in case the Federal income tax authorities of any time grant a longer extension of time for filing such returns with the Federal Government, the Comptroller may grant an additional extension of time for filing the annual return under this act of not more than thirty (30) days after the termination of the Federal extension. However, the amount of tax due shall, in these cases, nevertheless be subject to interest from the due dates and at the rates fixed by this act.

Art. 40.50 Examination of Returns. Federal income tax returns of any taxpayer insofar as they relate to taxable income under this
act, may be examined in accordance with the statutes of the United States for such case made and provided and in accordance with the proclamation of the President and the regulations of the Commissioner of Internal Revenue promulgated thereunder. Returns made to other states may likewise be examined when allowed.

The income tax returns made to this state shall be made available for inspection, upon application to the Comptroller and in his discretion, to proper tax officials of any state or territory of the United States or of the Federal Government whose duties require them to make such inspection.

Art. 40.51 lien of taxes. All taxes imposed by this act, together with all penalties and interest, shall be considered a public account, after being assessed in the manner prescribed in this act, and as such shall be a lien upon the franchises and property both real and personal of the taxpayer against whom the same are assessed, after the same has been entered and docketed of record by the tax assessor of the county where the resident’s franchises or property are situated.

The Comptroller may at any time transmit to the tax assessors of the respective counties of the State, to be by them entered of record, certificates of all liens for taxes imposed by this act, and penalties and interest thereon, from which there is any or territory of the

Art. 40.52 Changes Made by Federal Government.

a. If the amount of the taxable income returned by any taxpayer to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States, the taxpayer, within thirty days after the receipt of such final change or correction, shall make a corrected return, under oath or affirmation to the Comptroller, showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the United States. In case a taxpayer

fails to file a return of a correction which results in an increase in taxable income within the time prescribed, there shall be added to the tax a penalty of five (5) dollars for every day during which the taxpayer is in default.

b. If as a result of such final change or correction, there is any change made in the amount of the taxable income of any taxpayer upon which tax is imposed by this act, the Comptroller shall resettle the taxes.

Whichever a resettle is made hereunder, the Comptroller shall resettle the account according to law.

c. Where a return of change, correction or redetermination of Federal income or Federal tax has been filed after a petition for resettle ment or petition for review has been taken, the return shall be deemed a part of the original annual return, upon petition of the taxpayer at any subsequent proceeding, as though it has been filed with the original return, and no separate petition for resettle ment or for re view from the resettle resulting from such return of change, correction or redetermination is necessary.

Art. 46.53 Settlement and Resettlement.

a. All taxes due under this act shall be settled by the Comptroller. The Comptroller shall, so far possible, complete the settlement so that notice thereof may reach the taxpayer before the settlement is completed.

b. Promptly after the date of the settlement, the Comptroller shall send, by mail or otherwise, a notice of settlement to the taxpayer.

c. If any taxpayer neglects or refuses to make any return and payment of tax required by this act, the Comptroller shall estimate the tax due by the taxpayer and settle the amount due for taxes, penalties and interest thereon, from which settlement there shall be no right of review or appeal, but the Comptroller, may require a return to be filed, and thereupon make a settlement based upon such return and cancel the estimated settlement.

d. If within one year after the date of the notice of settlement the taxpayer is not satisfied with the settlement, the taxpayer may peti-
tion the Comptroller for resettlement. Within sixty days after receipt of the petition for resettlement, the Comptroller shall set the petition for hearing within a reasonable time.

e. If within two years after the date of the notice of settlement the Comptroller is not satisfied with the settlement, the Comptroller may order that a hearing for resettlement be held. The Comptroller shall give the taxpayer at least sixty days written notice of the hearing for resettlement.

f. In the hearing upon the petition for resettlement or upon the Comptroller's order for a hearing for resettlement, the Comptroller shall receive any oral or documentary evidence, if it is of the quality upon which responsible persons are accustomed to rely in the conduct of serious affairs; however, he may exclude irrelevant, immaterial and unduly repetitious evidence. The taxpayer and the Comptroller may cross-examine any witness on any relevant matter.

g. After the hearing, the Comptroller shall enter a written order disposing of the resettlement. In making this order, the Comptroller shall take into account the information presented in the hearing and any other information within his possession.

Art. 40.54 JUDICIAL REVIEW.

A taxpayer who is adversely affected or aggrieved by an order of the Comptroller made upon a petition for resettlement or upon a hearing for resettlement may obtain judicial review by filing a petition for review with the district court in Travis County within ninety days from the date of the Comptroller's order.

Art. 40.55 REFUNDS AND CREDITS.

Where the Comptroller finds upon settlement or upon resettlement that the taxes the taxpayer has paid exceed the taxes due by the taxpayer the Comptroller shall either give the taxpayer a credit for the excess or shall refund the excess tax paid, at the option of the taxpayer.

Art. 40.56 TAX A DEBT.

Every tax imposed by this act, and all interest and penalties thereon, shall become from the time it is due and payable, a personal debt from the taxpayer liable to pay the same to the State of Texas.

Art. 40.57 PENALTIES.

a. Any individual who wilfully makes a false and fraudulent return of taxable income made taxable by this act shall be guilty of wilful and corrupt perjury and, upon conviction thereof, shall be subject to punishment as provided by law. This penalty shall be in addition to any other penalties imposed by this act.

b. Any individual who wilfully fails, neglects or refuses to make a return or to pay the tax as hereinafter prescribed, or who shall refuse to permit the Comptroller to examine the books, papers and records of any taxpayer liable to pay tax under this act, is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars or undergo imprisonment not exceeding six months, or both. This is in addition to any other penalties imposed by this act."

ALLOCATION OF REVENUES.

The net revenues received by the State from the taxes imposed by this Act shall be placed in the Omnibus Tax Clearance Fund.

REPEALER.

Chapter 12 of Chapter 1, Acts 1959, 56th Legislature, Third Called Session, is repealed.

SEVERABILITY CLAUSE.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

EFFECTIVE DATE.

This Act shall be effective September 1, 1961.

EMERGENCY CLAUSE.

The fact that the State faces a grave fiscal crisis requiring new
taxes to be imposed to permit the State to continue to grow and prosper and the fact that the new taxes should be fairly imposed on all businesses within the State creates an emergency and a case of imperative public necessity; therefore, the Constitutional Rule requiring bills to be read on three several days in each House is suspended.

Mr. Wilson of Trinity moved to table the amendment offered by Mr. Korioth.

A record vote was requested on the motion to table. The motion to table the amendment offered by Mr. Korioth prevailed by the following vote:

Yea—79
Adams of Lubbock McGregor
Adams of Titus of McLennan
Allen
Andrews
Atwell
Bannard, Mrs.
Barnes
Bartram
Bell
Berry
Blaine
Boyson
Burges
Butler
Chapman
Connell
Cory
Cowles
CRAIN
Crews
Curtin
Earls
Fairchild
Ferguson
Garrison
Gilben
Glissing
Grover
Harding
Healy
Holliswell
Haeber
James
Jarvis
Johnson of Dallas
Johnson of Bell
Jones of Dallas
KoThe
KoUba.
Latimer
Leaverton

Nays—62
Alaniz
Baiit
Ballman
Barlow
Bass
Bridges
Buchanan
Caldwell
Cannon
Carriker
Cole of Harris
Cole of Hunt
Collins
Collum
Cotten
Cowen
de la Garza
Dewey
Duff, Miss
Dungan
Eckhardt
Fletcher
Gladden
Glass
Green
Hale
Haring
Harrington
Haynes
Hinson
Hughes
of Grayson
Jamieson
Johnson of El Paso
Johnson of Travis
Kennard
Kilpatrick
Korioth
Lacy
Longoria
McCoppin
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
McGregor
Martinez
Mills
Mutchler
Niemeyer
Nugent
Osborn
Peeler
Petty
Pipkin
Preston
Price
Quinn
Rapp
Ratcliff
Read
Richard
Roberts of Dawson
Rosson
Sander
Schram
Shipley
Black
Sider
Smith of Bexar
Snelson
Smith of Galveston
Stewart
Stewart
Stroude
Strode
Wells
Wheatley
Yates

Absent
Guffey
Sparks
Hughes of Dallas
Trevino
Lewis

Absent—Excused
Cook
Oliver
Floyd

Mr. Carriker offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 as follows:

1. Strike out paragraph (12) of Article 40.02 and substitute In lieu thereof the following:

"(12) 'Taxable Consideration' shall mean:

(a) The total value in excess of One Hundred Dollars ($100) of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail, as herein defined, without
any deduction on account of the cost or value of the tangible personal property sold, cost or value of transportation, cost or value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the State of Texas or any other expense, but excluding the value of the following: (i) returnable containers, (ii) labor or service cost in delivering, installing or applying the tangible personal property sold if the consideration therefor is stated separately from the consideration paid for the tangible personal property sold at retail; provided, however, that the term 'delivering' shall include only actual transportation from the vendor's place of business or storage to the place designated by the purchaser.

(b) There shall be deducted from the taxable consideration the value in excess of One Hundred Dollars ($100) of any tangible personal property actually taken in trade or exchange within this State in lieu of the whole or any part of the taxable consideration. For the purpose of this paragraph (1), the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of such tangible personal property.

(c) In any transaction not at arm's length, the taxable consideration shall not be less than the prevailing market price for similar tangible personal property.

(d) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines, the full consideration in excess of One Hundred Dollars ($100) paid or delivered to the vendor or lessee shall be considered the taxable consideration even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. Where the vendor or lessor supplies or provides an employee to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the taxable consideration if separately stated. There shall also be included as part of the taxable consideration the value of anything paid or delivered or promised to be paid or delivered by a lessor, whether it be money or otherwise, to any person other than the vendor or lessee by reason of the maintenance, insurance or repair of the tangible personal property of which a lessee has the possession or custody under a rental contract or lease arrangement.

(e) With respect to the use tax imposed by Article 40.04 upon any tangible personal property originally purchased by the user of such property six (6) months or longer prior to the first taxable use of such tangible personal property within the State, such user may elect to pay tax on a substituted base determined by considering the taxable consideration of such tangible personal property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of such first use within the State. Such election must be made by filing a notice thereof in the form specified by the Comptroller and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within one (1) year of the due date of such report and payment."

2. Strike out Article 40.03 and substitute in lieu thereof the following:

"Art. 40.03. Imposition of Sales Tax.
(1) There is hereby imposed upon each separate sale at retail of tangible personal property within this State a sales tax of two percent (2%) of the taxable consideration, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the State as hereinbefore provided. Every vendor shall add the sales tax imposed by this Paragraph (1), or the average equivalent as payment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. Where the vendor or lessor supplies or provides an employee to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the taxable consideration if separately stated. There shall also be included as part of the taxable consideration the value of anything paid or delivered or promised to be paid or delivered by a lessor, whether it be money or otherwise, to any person other than the vendor or lessee by reason of the maintenance, insurance or repair of the tangible personal property of which a lessee has the possession or custody under a rental contract or lease arrangement."

...
the same manner as the taxable consideration. The tax shall be added to the taxable consideration at the rate of One Cent (1¢) for each Fifty Cents (50¢) or fractional part thereof of the taxable consideration.

(3) The amount collected by the vendor from the purchaser in reimbursement of the sales tax must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

(4) If a purchaser certifies in writing to a vendor that the property purchased will be used in a manner or for a purpose entitling the vendor and the purchaser to regard the taxable consideration from the sale as exempted under this Chapter from the tax or taxes imposed by this Chapter, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for the payment of the tax and shall pay it over to the State as herein provided for payment over by the vendor to the State.

(b) Any vendor engaged in leasing or renting tangible personal property who shall enter into a series of short-term leases with any vendee or lessee with intent to evade the provisions of this Chapter, shall be guilty of a misdemeanor and upon conviction punished under the provisions of Article 40.33 of this Chapter.

3. Strike out Article 40.04 and substitute in lieu thereof the following:


(1) There is hereby imposed upon the use within this State of tangible personal property purchased at retail on or after the effective date of this Chapter a tax of two percent (2%) of the taxable consideration, which tax shall be paid to the State by the person who uses such tangible personal property as hereinafter provided, except that such tax shall not be paid by such person who has paid the excise tax imposed by Paragraph (1) of Article 40.03 of this Chapter with respect to such tangible personal property except motor vehicles. The tax shall be added to the taxable consideration at the rate of One Cent (1¢) for each Fifty Cents (50¢) or fractional part thereof of the taxable consideration."

Mr. Allen moved to table the amendment offered by Mr. Carriker.

A record vote was requested on the motion to table.

The motion to table the amendment by Mr. Carriker to the amendment by Mr. Wilson of Trinity prevailed by the following vote:

Yea: 102

Adams of Lubbock
Adams of Titus
Alamia
Allen
Andrews
Atwell
Ballman
Bannister, Mrs.
Barnes
Barrington
Bates
Bell
Blaine
Bosmen
Buchanan
Butler
Cannon
Cole of Harris
Cole of Hunt
Connell
Cory
Cotten
Cowles
Crain
Crews
Cruce
Curtis
Dewey
Duffy, Miss
Duncan
Durlin
Fachild
Fletcher
Fitzgerald
Foreman
Garricen
Gibbons
Glass
Glasier
Green
Grover

1 Josey-42
Mr. Slider moved that the rules be suspended to order the previous question on the passage to engrossment of H. B. No. 727 with the pending amendments on the Speaker’s desk, and to allow two speakers on each side to speak for and against H. B. No. 727.

The motion was lost.

Mr. Carriker offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 as follows:

1. Strike out paragraph (12) of Article 46.02 and substitute in lieu thereof the following:

   "(12) ‘Taxable Consideration’ shall mean:

   (a) The total value in excess of Fifty Dollars ($50) of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail, as herein defined, without any deduction on account of the cost of value of the tangible personal property sold, cost or value of transportation, cost or value of labor or services, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the State of Texas or any other expense, but excluding the value of the following: (i) returnable containers (ii) labor or service cost in delivering, installing or applying the tangible personal property sold if the consideration therefore is stated separately from the consideration paid for the tangible personal property sold at retail; provided, however, that the term ‘delivering’ shall include only actual transportation from the vendor’s place of business or storage to the place designated by the purchaser.

   (b) There shall be deducted from the taxable consideration the value in excess of Fifty Dollars ($50) of any tangible personal property actually taken in trade or exchange for the purpose of this paragraph (12) the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of such tangible personal property.

   (c) In any transaction not at arm’s length, the taxable consideration shall not be less than the prevailing market price for similar tangible personal property.

   (d) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to, linens, aprons, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines, the full consideration in excess of Fifty Dollars ($50) paid or delivered to the vendor or lessee shall be considered the taxable consideration even though such consideration be separately stated and be designated as pay-
ment for processing, laundering, service, maintenance, insurance, repairs, depreciation or otherwise. Where the vendor or lessor supplies or provides an employee to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the taxable consideration if separately stated. There shall also be included as part of the taxable consideration the value of anything paid or delivered or promised to be paid or delivered by a lessee, whether it be money or otherwise, to any person other than the vendor or lessor by reason of the maintenance, insurance or repair of the tangible personal property of which a lessee has the possession or custody under a rental contract or lease arrangement.

(a) With respect to the use tax imposed by Article 40.04 upon any tangible personal property originally purchased by the user of such property six (6) months or longer prior to the first taxable use of such tangible personal property within the State, such user may elect to pay tax on a substituted base determined by considering the taxable consideration of such tangible personal property for tax purposes to be equal to the prevailing market price of similar tangible personal property at the time and place of such first use within the State. Such election must be made by filing a notice thereof in the form specified by the Comptroller and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within one (1) year of the due date of such report and payment.

2. Strike out Article 40.03 and substitute in lieu thereof the following:

"Art. 40.03. Imposition of Sales Tax.

(1) There is hereby imposed upon each separate sale at retail of tangible personal property within this State a sales tax of two percent (2%) of the taxable consideration, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the State as hereinafter provided. Every vendor shall add the sales tax imposed by this Paragraph (1), or the aver-

are equivalent of said tax, to the taxable consideration, except as otherwise provided, and when added the tax shall constitute a part of the taxable consideration and shall be a debt of the purchaser to the vendor until paid and shall be recoverable at law in the same manner as the taxable consideration.

The tax shall be added to the taxable consideration at the rate of one cent (1¢) for each Fifty Cents (50¢) or fractional part thereof of the taxable consideration.

(2) No amount collected by the vendor from the purchaser in the reimbursement of the sales tax must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

(3) If a purchaser certifies in writing to a vendor that the property purchased will be used in a manner or for a purpose entitling the vendor and the purchaser to regard the taxable consideration from the sale as exempted under this Chapter from the tax or taxes imposed by this Chapter, and uses the property in some other manner or for some other purpose, the purchaser shall be liable for the payment of the tax and shall pay it over to the State as herein provided for payment over by the vendor to the State.

(4) (a) Any vendor selling as separate items tangible personal property commonly sold as a unit or as a whole, with the total price made the provisions of this Chapter, shall be guilty of a misdemeanor and upon conviction punished under the provisions of Article 40.33 of this Chapter.

(b) Any vendor engaged in leasing or renting tangible personal property who shall enter into a series of short-term leases with any vendor or lessee with intent to evade the provisions of this Chapter, shall be guilty of a misdemeanor and upon conviction punished under the provisions or Article 40.33 of this Chapter.

2. Strike out Article 40.04 and substitute in lieu thereof the following:


(2) Any vendor engaged in leasing or renting tangible personal property who shall enter into a series of short-term leases with any vendor or lessee with intent to evade the provisions of this Chapter, shall be guilty of a misdemeanor and upon conviction punished under the provisions of Article 40.33 of this Chapter."
(1) There is hereby imposed on the use within this State of tangible personal property purchased at retail on or after the effective date of this Chapter a tax of two percent (2%) of the taxable consideration, which tax shall be paid to the State by the person who uses such tangible personal property as hereinafter provided, except that such tax shall not be paid by such person who has paid the excise tax imposed by Paragraph (1) of Article 40.03 of this Chapter with respect to such tangible personal property except motor vehicles. The tax shall be added to the taxable consideration at the rate of One Cent (1¢) for each Fifty Cents (50¢) or fractional part thereof of the taxable consideration."

Mr. Allen moved to table the amendment offered by Mr. Carriker.

A record vote was requested on the motion to table.

The motion to table the amendment offered by Mr. Carriker prevailed by the following vote:

Yeas-97
Adams of Lubbock
Adams of Titus
Allen
Andrews
Atwell
Ballman
Bannister, Mrs.
Bartram
Bell
Blake
Boag
Boone
Buchanan
Burgess
Butler
Cannon
Cole of Harris
Connell
Cory
Cotton
Cottle
Cowles
Crain
Crews
Cunnington
Dawson
Davis, Miss
Dungan
Ehrle
Erickson
Evans
Gladden
Osborn
Peary
Peele
Pettit
Preston
Price
Quilliam
Rapp
Ratcliff
Read
Richards
Roberts of Dawson
Ross
Rosson
Sandahl
Scharf
Shannon
Shipley
Mr. pearson offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to H. B. 727 by adding a new Subsection to Art. 40.05 as follows:

"(2) There are exempted from the taxes imposed by this Act the purchase price of medicines, pre-
scribed by a licensed physician, and mechanical devices used for corrective or therapeutic treatment, or for the use of handicapped persons and those under physical disability, including but not limited to eyeglasses, dental plates, wheel chairs, crutches, braces, hospital beds, etc. There are exempted from the taxes imposed by this Act the monies paid for medical or dental care and allied services and monies paid for hospital care and related services.

The amendment by Mr. Walker was adopted.

Mr. Pipkin offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

(2) Strike out Art. 40.04 and substitute in lieu thereof the following:

"Art. 40.031. Imposition of Use Tax. There is hereby imposed upon the use within this State of tangible personal property purchased at retail on or after the effective date of this Chapter, a tax of one percent (1%) of the purchase price, which tax shall be paid to the State by the person who uses such tangible personal property as herein provided, except that such tax shall not be paid by such person where he has paid the excise tax imposed by Article 40.03 of this Chapter with respect to tangible personal property."

(2) Strike out subparagraphs (g), (h), (i), (j), (k), (p), (q), (r), (s), (t), (u), (v) and (w) of paragraph 1 of Article 40.04. Exemptions.

Mr. Quilliam moved to table the amendment by Mr. Pipkin.

A record vote was requested on the motion to table.

The motion to table the amendment offered by Mr. Wilson of Trinity prevailed by the following vote:

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April 20, 1961

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Richardson
Roberts of Hill
Rosas
Rossen
Sandahl
Shannon
Stark
Smith of Bexar
Spillman
Springer
Stewart
of Galveston
Thurman
Thurmond
Townsend
Trevino
Watson
Wells
Whitefield
Wilson of Trinity
of Johnson of Dallas
of Jones of Dallas
of Johnson of Bell
of Jones of Dallas
of Kennard
of Kilpatrick
of Longoria
of McCoppin
of Mullen
of Murray
of Oehborn
of Petty
Mr. Eckhardt offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to H. B. 727 by adding the following provisions as Sec. 2:

Sec. 2. (a) "There is hereby levied an occupational tax on the business or occupation of producing oil within this State, computed as follows:

(1) At such times as the market value of crude petroleum is not more than $1.00 per barrel, a tax shall be paid by each company producing such crude petroleum within this State on production during any given calendar month of 4.6¢ per barrel; and if the market value of crude petroleum is less than $1.00 per barrel, an additional tax shall be paid by each company producing such crude petroleum within this State on production during any given calendar month of 6¢ per barrel so computed as follows:

(2) At such times as the market value of crude petroleum is more than $1.00 but not more than $1.50 per barrel, a tax shall be paid by each company producing such crude petroleum within this State on production during any given calendar month of 7¢ per barrel.

(3) Provided, however, that notwithstanding the provisions of paragraphs (1) and (2) above, each company which produces more than 75,000 barrels of crude petroleum per month shall pay under this tax only 4¢ per barrel (if the market value of crude petroleum is more than $1.00 per barrel) and 6¢ per barrel (if the market value of crude petroleum is more than $1.50 per barrel) on each barrel produced, however, this tax rate shall apply only to the producer's interest and not to the royalty interest, and this section ("(3)"") is intended to treat the term "producer" and "royalty owner" separately and distinctly, notwithstanding the provisions of section ("(d)"") above. This provision is to be considered severable from all other provisions of this bill, and it is declared that the intent of the legislature is that all other provisions would have been enacted if this section had not been included.

(4) In the event that the provisions of sections (1) and (2) above are in anywise held ineffective to establish categories to which a graduated scale of taxation of oil may be applied, in accordance with their purpose, then this Act shall not affect the provisions of law by which an occupation tax on oil was levied under the law at the time of the enactment thereof, and such provisions of law shall remain in effect just as if this Act had not been passed.

(5) The production categories set forth above for the purposes of determining the rate of tax shall be the amount produced by the company less the outstanding royalty interests included in production figures. Thus, in the case of any production by a company which production is subject to a percentage royalty interest, that pro-
duction shall be decreased by a percentage equal to the per cent of royalty outstanding.

(a) Collection.

"a. The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports under oath as hereinafter provided.

"b. The producer shall pay the tax on all oil produced, making such payment to the Comptroller of Public Accounts of the State of Texas by legal tender or by cashier's check payable to the State Treasurer.

c. The producing company shall pay the tax for that fractional portion of its total production of oil which is equal to the total of all royalty interests, in accordance with the definition of such interest as set forth in 'd' above, at the rate of 4.64 per barrel when the value of such oil is not more than $1.00 per barrel and at the rate of 4.64% of the market value when such market value is more than $1.00 per barrel and deduct the tax so paid from payment due the royalty owner, such payment to be made to the Comptroller of Public Accounts in the same manner as is required of producers generally.

d. Each royalty owner whose aggregate royalty interest in any given month represents a barrel production in excess of 200,000 barrels shall file a separate report to the Comptroller of Public Accounts on special forms to be furnished by the Comptroller and shall pay an occupation tax on that excess in accordance with the schedule set forth in Sub-section 'e' above taking into account the payment already made by the producing company.

e. The Comptroller shall be empowered to prepare such forms and to require such reports from producers and their associate, parent, or related companies, in accordance with the provisions of this Act, as may be reasonably necessary or expedient in enforcing the terms hereof.

"f. The tax levied herein shall be paid monthly on the twenty-fifth day of each month next preceding the producing company, as herebefore defined, and by such royalty owners as are required to report and pay their tax directly to the Comptroller under the provisions hereof.

"g. Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the twenty-fifth of the month immediately following, such payment shall become delinquent and a penalty of ten (10) per cent of the amount of the tax shall be added and such tax and penalty shall bear interest at the rate of six (6) percent per annum from date due until date paid.

(c) Effective Date.

This Article shall take effect and be in force from and after September 1, 1961.

Section (d) Repealer.

This Article shall repeal the provisions of page 4, title 132A.
**REASON FOR VOTE**

Eckhardt Amendment

In the event that H. B. 727 becomes law, I feel that the small independent oil operators should have some relief. This amendment does that.

**BAILEY.**

Mr. Green moved that the rules be suspended to order the previous question on the passage of H. B. No. 727 to engrossment, including the pending amendments on the Speaker's desk, and if desired, with the provision of allowing two speakers on each side, to speak for and against H. B. No. 727, and the main question was ordered.

Mr. Haring offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to H. B. No. 727 by setting up a new subsection under Section two to be known as Subsection 18, and to read as follows:

(18) Clothing. There is exempt from the taxes imposed by this Act the purchase price from the sale of all articles of wearing apparel.

A record vote was requested on the amendment by Mr. Haring.

The amendment by Mr. Haring was lost by the following vote:

**Yeas—41**

Alanis  Hinson
Bailey  Hollowell
Barlow  Hughes
Barnes  of Grayson
Caldwell  Johnson of Bexar
Cannon  of Bexar
Chapman  Kilpatrick
Collins  Lack
Cory  Larry
Cotten  Latimer
de la Garza  of Bexar
Eckhardt  Markgraf
Fletcher  Moore
Green  Mullen
Guerry  Pearcy
Haring  Pieratt
Harrington  Richardson

**Nays—52**

Alamia  Kilpatrick
Bailey  Lack
Barlow  Leaverton
Berry  Longoria
Bridges  McGregor
Carrillo  of El Paso
Chambers  Markgraf
Cole of Harris  Moore
Collins  Mullen
Curtis  Parsons
de la Garza  Pieratt
Dewey  Richardson
Eckhardt  Roberts of Hill
Fletcher  Ross
Gladden  Sandahl
Glass  Shannon
Guerry  Smith of Jefferson
Hale  Springer
Haring  Stewart
Harrington  of Galveston
Hinson  Struve
Hughes  Ward
of Grayson  Watson
Isaacs, Miss  Wells
Johnson of Bexar  Yestak
Jones of Travis  

**Absent—Excused**

Cook  Oliver
Floyd  Reynolds

Hughes of Dallas  Price
James  Quilliam
Jarvis  Ratliff
Johnson of Dallas  Read
Johnson of Bell  Richards
Jones of Dallas  Roberts of Dawson
Kelso  Rosson
Lary  Sbraman
La Valle  Shipley
Lewis  Slider
McCoppin  Smith of Bexar
McGregor  of McLennan
McIhlen  Spelman
McIlhany  Stewart
Martin  of Wichita
Minter  Thurmond
Murray  Townsend
Niehau  Trevino
O’Day  Tunell
Osborn  Walker
Peary  Wheatley
Peeler  Wilson of Trinity
Petty  Wilson of Potter
Pipkin  Woods
Preston  

**Yeas—41**

Alanis  Hinson
Bailey  Hollowell
Barlow  Hughes
Barnes  of Grayson
Caldwell  Johnson of Bexar
Cannon  of Bexar
Chapman  Kilpatrick
Collins  Lack
Cory  Larry
Cotten  Latimer
de la Garza  of Bexar
Eckhardt  Markgraf
Fletcher  Moore
Green  Mullen
Guerry  Pearcy
Haring  Pieratt
Harrington  Richardson

**Nays—52**

Alanis  Hinson
Bailey  Hollowell
Barlow  Hughes
Barnes  of Grayson
Caldwell  Johnson of Bexar
Cannon  of Bexar
Chapman  Kilpatrick
Collins  Lack
Cory  Larry
Cotten  Latimer
de la Garza  of Bexar
Eckhardt  Markgraf
Fletcher  Moore
Green  Mullen
Guerry  Pearcy
Haring  Pieratt
Harrington  Richardson

**Absent—Excused**

Cook  Oliver
Floyd  Reynolds
Mr. Fletcher offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend H. B. 727 by adding there­to a new section as follows:

Section 2 (a) There is levied an occupation tax on every person, firm, or corporation engaged in the business of selling, issuing or delivering trading stamps, checks, receipts, cer­tificates, tokens, or other similar devises to persons, firms, or corp­orations engaged in trade or busi­ness, with the understanding or agreement, expressed or implied, that the same shall be presented or given by the latter to their patrons as a discount, bonus, premium, or as an inducement to secure trade or patronage, and that the person, firm, or corporation selling, issuing, or delivering the same will give to the person presenting or promising the same, money or other thing of value, or as an inducement or preference in any way on account of the possession or presentation thereof. Provided, however, this section shall not be construed to apply to a manufacturer, or to a merchant who sells the goods, wares or merchandise of such manufacturer, offering to present to the purchaser or customer a gift of certain value as an inducement to purchase such goods, wares or merchandise.

(b) Every person, firm, or corporation subject to the tax levied by this Act, shall, on the twentieth day of each month, report under oath, to the Comptroller of Public Ac­counts, on a form prescribed and furnished by the Comptroller, the amount of gross receipts from all business done within this State dur­ing the calendar month next pre­ceding.

(c) At the time of making the report required here­inafore, each person, firm, or corporation shall pay to the Comptroller of Public Ac­counts an occupation tax equal to ten percent (10%) of the gross re­ceipts of said business as shown on said report.

(d) A complete record of the busi­ness transacted within this State, to­gether with such other information
as the Comptroller may require shall be kept for a period to two (2) years by each person, firm, or corporation subject to this tax. Such records shall be open for the inspection of the Comptroller or the Attorney General or their authorized representatives.

(e) The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Section.

(f) (1) If any person, firm, or corporation shall violate any of the provisions of this Section, or any rule or regulation adopted by the Comptroller for the enforcement of this Section, such person, firm, or corporation shall forfeit to the State of Texas as a penalty not less than Twenty-Five Dollars ($25) and not more than Two Hundred Dollars ($200) for each violation, and each day's violation shall constitute a separate offense.

(2) If any person, firm, or corporation shall fail to pay the tax levied by this Section promptly, such person, firm or corporation shall forfeit two percent (2%) thereof as a penalty, and, after the first twenty (20) days, such person, firm or corporation shall forfeit an additional eight percent (8%).

(g) The State shall have a prior lien for all delinquent taxes, penalties and interest on all the property used by a person, firm, or corporation in the business of selling, issuing, or delivering trade stamps or similar devices.

(h) The tax levied by this Section shall be in effect on the first day of the first month following the effective date of the passage of this Section.

The amendment by Mr. Fletcher to the amendment by Mr. Wilson of Trinity was lost by the following vote:

Yeas—42

Alanis Johnson of Bexar
Barlow Koliba
Burgess Kortoth
Caldwell Lack
Cannon Mc Coppin
Carver Markgraf
Chapman Mutschler
Collins Niemeyer
Dewey Nugent
Duff, Miss Pearson
Dungan Rapp
Eckhardt Roberts of Hill
Fletcher Schram
Gladden Sheehan
Guerry Stewart
Hartin of Galveston
Harrington
Haynes of Wichita
Hinson Strute
Hollowell Townsend
Hughes of Grayson
Isaacks, Miss Yezek

Nays—99

Adams of Lubbock Gluslng
Adams of Titus
Allen Grover
Andrews Halle
Aiwell Harding
Bakelman Hasty
Bannard, Mrs. Heiskar
Barnea Hughes of Dallas
Bartraum James
Bell Jamison
Berry Jax
Blaine Johnson of Dallas
Boyson Johnson of Bell
Bridges Jones of Dallas
Buchanan Jones of Travis
Butler Keadard
Cole of Harris Lary
Cole of Hunt Lattine
Corny LaValle
Cottam Leaverton
Cowen Lewie
Cowles Longoria
Crair of McLennan
Crews McGregor
Curutting McCutcheon
de la Garza of El Paso
Dhilany
Ehrie
Fairchild Miller
Foreman Moore
Garrison Mullen
Gibbens Murray

A record vote was requested on the amendment by Mr. Fletcher.
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<td>Amend the amendment to H. B. 727 by setting up a new section under sub-section (a) on page 12 to read as follows:</td>
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<tr>
<td>1. Baby Diapers. There are exempt from taxes imposed by this Act the purchase price from the sale of baby diapers.</td>
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<td>2. Coffins. There are exempt from the taxes imposed by this Act the purchase price from the sale of coffins.</td>
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<td>Yeas—40</td>
<td>Yeas—40</td>
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Mr. Heatly offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 by striking out the second sentence of paragraph (3) of Section 2 and substituting in lieu thereof the following:

"Provided that this exemption shall not include beer or ale; however, this exemption shall include, but not be limited to, the sale, distribution, storage, use or other consumption of cigarettes and other tobacco products, motor fuel and all alcoholic beverages except beer and ale."

A record vote was requested on the amendment by Mr. Heatly.

The amendment by Mr. Heatly to the amendment by Mr. Wilson of Trinity was lost by the following vote:

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Mr. Barlow offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend H. B. 727, as substituted, by striking subsection (b) of Section 1 of Article 40.05 on page 7 of said bill, and substituting in lieu thereof the following section:

"(b) The sale at retail to or by, or use by, the United States, its agencies and instrumentalities; this State, its agencies, political subdivisions and instrumentalities of tangible personal property.

The amendment by Mr. Barlow was adopted.

Mr. Gibbens offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend amendment to House Bill 727 by adding a new section to be appropriately numbered and placed which shall read as follows:

"Section _____ Nothing contained herein shall be construed to authorize the use of Mills or tokens and said use of such mills or tokens for the payment of any tax herein is hereby positively prohibited."

The amendment by Mr. Gibbens was adopted.

Mr. Carriker offered the following amendment to the amendment offered by Mr. Wilson of Trinity:

Amend the amendment to House Bill No. 727 as follows:

1. Strike out paragraph (12) of Article 46.05 and substitute in lieu thereof the following:

"(12) 'Taxable Consideration' shall mean:

(a) The total value in excess of Twenty-five Dollars ($25) of anything paid or delivered, or promised to be paid or delivered, whether it be money or otherwise, in complete performance of a sale at retail, as herein defined, without any deduction on account of the cost or value of the tangible personal property sold, cost or value of transportation, cost or value of labor or services, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the State of Texas or any other expense, but excluding the value of the following: (i) returnable containers (ii) labor or service cost in delivering, installing or applying the tangible personal property sold at the retail; provided, however, that the term 'delivering' shall include only actual transportation from the vendor's place of business or storage to the place designated by the purchaser.

(b) There shall be deducted from the taxable consideration the value in excess of Twenty-five Dollars ($25) of any tangible personal property actually taken in trade or exchange within this State in lieu of the whole or any part of the taxable consideration. For the purpose of this paragraph (12) the amount allowed by reason of tangible personal property actually taken in trade or exchange shall be considered the value of such tangible personal property.

(c) In any transaction not at arm's length, the taxable consideration shall not be less than the prevailing market price for similar tangible personal property.

(d) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to linens, appliances, motor vehicles, trailers, tires, industrial office and construction equipment, and business machines, the full consideration in excess of Twenty-five Dollars ($25) paid or delivered to the vendor or lessor shall be considered the taxable consideration even though such consideration be separately stated and be designated as payment for processing, laundering, service, maintenance, insurance, repair, depreciation or otherwise. Where the vendor or lessor supplies or provides an employee to operate such tangible personal property, the value of the labor thus supplied may be excluded and shall not be considered as part of the taxable consideration if separately stated. There shall also be included as part of the taxable consideration the value of anything paid or delivered or promised to be paid or delivered by a lessee, whether it be money or otherwise, to any person other than.
the vendor or lessee by reason of
the maintenance, insurance or repair
of the tangible personal property of
which a lessee has the possession
or custody under a rental contract
or lease arrangement.

(e) With respect to the use tax
imposed by Article 40.04 upon any
tangible personal property originally
purchased by the user of such prop-
erty six (6) months or longer prior
to the first taxable use of such
tangible personal property within
the State, such user may elect to pay
tax on a substituted base determined
by considering the taxable consider-
ation of such tangible personal prop-
erty for tax purposes to be equal
to the prevailing market price of
similar tangible personal property
at the time and place of such first
use within the State. Such election
must be made by filing a notice
thereof in the form specified by the
Comptroller and reporting such tax
due plus all accrued penalties and
interest, if there be any, within one
year of the due date of such
report and payment.

3. Strike out Article 40.03 and
substitute in lieu thereof the follow-
ing:

"Art. 40.03. Imposition of Sales
Tax.

(1) There is hereby imposed up-
on each separate sale at retail of
tangible personal property within
this State a sales tax of two per-
cent (2 %) of the taxable consid-
eration, which tax shall be collected
by the vendor from the purchaser,
and shall be paid over to the State
as hereinafter provided. Every ven-
dor shall add the sales tax imposed
by this Paragraph (1), or the aver-
age equivalent of said tax, to the
sale price or price advertised for
such tangible personal property
purchased at retail or as a whole,
except as otherwise provided, and when added
the tax shall constitute a part of
the taxable consideration and shall
be a debt of the purchaser to the
vendor until paid and shall be re-
coverable at law in the same manner
as the taxable consideration. The
tax shall be added to the taxable
consideration at the rate of One
Cent (1¢) for each Fifty Cents
(50¢) or fractional part thereof
of the taxable consideration.

(2) The amount collected by the
vendor from the purchaser in re-
turnment of the sales tax must
be displayed separately from the list
price, the price advertised in the
premises, the marked price, or other
price on the sales check or other
proof of sale.

(3) If a purchaser certifies in
writing to a vendor that the prop-
erty purchased will be used in a
manner or for a purpose entitling
the vendor and the purchaser to re-
gard the taxable consideration from
the sale as exempted under this
Chapter from the tax or taxes im-
posed by this Chapter, and uses the
property in some other manner or
for some other purpose, the purc-
aser shall be liable for the payment
of the tax and shall pay it over to
the State as herein provided for
payment over by the vendor to the
State.

(a) Any vendor selling as
separate items tangible personal
property commonly sold as a unit
or as a whole, with intent to evade
the provisions of this Chapter, shall
be guilty of a misdemeanor and upon
conviction punished under the pro-
visions of Article 40.33 of this
Chapter.

(b) Any vendor engaged in
leasing or renting tangible personal
property who shall enter into a series
of short-term leases with any ven-
dee or lessee with intent to evade
the provisions of this Chapter, shall
be guilty of a misdemeanor and
upon conviction punished under the
provisions of Article 40.33 of this
Chapter.

3. Strike out Article 40.04 and
substitute in lieu thereof the follow-
ing:

"Art. 40.04. Imposition of Use
Tax.

(1) There is hereby imposed upon
the use within this State of tangible
personal property purchased at re-
tail on or after the effective date
of this Chapter a tax of two per-
cent (2%) of the taxable consid-
eration, which tax shall be paid to
the State by the person who uses
such tangible personal property as
hereinafter provided, except that
such tax shall not be paid by such
person who has paid the excise tax
imposed by Paragraph (1) of Ar-
ticle 40.03 of this Chapter with re-
spect to such tangible personal prop-
erty except motor vehicles. The tax
shall be added to the taxable consideration at the rate of One Cent (1¢) for each Fifty Cents (50¢) or fractional part thereof of the taxable consideration."

A record vote was requested on the amendment by Mr. Carriker.

The amendment offered by Mr. Carriker to the amendment offered by Mr. Wilson of Trinity was lost by the following vote:

**Yeas—53**

Adams of Lubbock
Bailey
Barlow
Bartram
Berry
Bridges
Carriker
Chapman
Collins
Cory
de la Garza
Duff, Miss
Enckhardt
Fletcher
Gladden
Hale
Haring
Hinson
Hollowell
Hughes of Grayson
Hughes of Dallas
Johnson of Bexar
Jones of Travis

**Nays—91**

Adams of Titus
Allen
Andrews
Atwell
Ballman
Bansfield, Mrs.
Barnes
Bass
Bell
Blaine
Boyson
Buchanan
Burgess
Butler
Caldwell
Cannon
Cole of Harris
Connell
Cotten
Cowen

eekker, Miss
James
Jamison
Jarvis
Johnson of Dallas
Johnson of Bell
Jones of Dallas
Keenard
Larson
Lewis
McGregor
of McLennan
McGregor of El Paso
Martin
Miller
Murray
Nutscher
Niemeier
Nugent
Osborn
Peery
Peeler
Perry
Pipkin
Preston
Price
Quilliam

**Absent**

Smith of Bexar

**Absent—Excused**

Cook
Floyd

**REASON FOR VOTE**

Carriker Amendment ($25.00 Deductible)

In the event that H. B. 727 becomes law, I feel that this amendment will help to safeguard the wage-earner and the small businessman.

SCOTT BAILEY.

A record vote was requested on the amendment by Mr. Wilson of Trinity, as amended.

The vote of the House was taken on the amendment by Mr. Wilson of Trinity, as amended and the vote was announced yeas 71, nays 7 and 3 present—not voting.

A verification of the vote was requested, and was granted.

The roll of those voting "yes" was again called and the verified vote resulted, as follows:
Yeas--71

Adams of Lubbock Johnson of Dallas
Allen Jones of Dallas
Atwell La Valle
Baker Leaverton
Barrows Lewis
Bartham McCoplin
Barr Martin
Blaine Murray
Buchanan Nims
Burgess Nugent
Butler Osborne
Chapman Peto
Cole of Harris Piggin
Cole of Hunt Preston
Connell Price
Cory Quillian
Cowen Ratcliff
Cowles Read
Cravens Richards
Curington Roberts of Dawson
de la Garza Rosen
Dangal Saadahl
Ehrle Schram
Fairchild Slack
Foreman Slider
Gibbens Suits
Glasier Sipple
Glover Thurmond
Hardee Townsend
Healy Tunell
Hueche Walker
Hughes of Dallas Wells
James Wilson of Trinity
Jackson Wilson of Potter
Jarvis

Nays--70

Allen Harrington
Ballaban Haynes
Ballarino Hinson
Ball Bell Hughes
Barron of Grayson Isaacks, Miss
Bridges Johnson of Bexar
Caldwell Johnson of Travis
Cannon Kennard
Carrinker Kilpatrick
Culinn Koliba
Cotten Kerloch
Craig Lack
Dewey Lazy
Deff, Miss Latimer
Dickardt Longoria
Fletcher McGregor
Garrison of El Paso
Glass McIlhany
Green Markgraf
Guffey Miller
Hale Moore

Reason for Voting

It has become apparent that continued delay in passing a major tax bill will result in several costly special sessions. While I would prefer, along with many other House members, to pass some other sort of tax bill, all other alternatives offered today have failed. To further delay balancing the State's budget and retiring the deficit would be evidence of fiscal irresponsibility.

Pete La Valle.
REASON FOR VOTE

I voted against Committee Amendment No. 1 to H. B. 727 for several reasons—one reason is attributed to the fact that I received more requests AGAINST than FOR such a sales tax measure.

A record vote was requested on the passage of H. B. No. 727 to engrossment.

H. B. No. 727 was passed to engrossment by the following vote:

YEAS—75

Adams of Lubbock
Allen
Atwell
Ballman
Bandfield, Mrs.
Bartrum
Berry
Blalock
Buchanan
Burges
Byler
Chapman
Cole of Harris
Cole of Hunt
Corry
Cowen
Cowles
Crais
Crews
Curlington
de la Garza
Dungan
Earle
Fairchild
Fowble
Foreman
Garrison
Gibbons
Glasing
Grover
Harding
Healy
Heiseher
Hughes of Dallas
Janes
Jarvis

NAY—45

Adams
Bailey
Barlow
Bass
Bell
Boyson

YEAS

Fokharitz
Fletcher
Gaddis
Glass
Green
Guyfer
Hale
Haring
Harrington
Haynes
Hinson
Hollowell
Hughes
Hutcheson
Isacks, Miss
Jones of Travis
Kennard
Kilpatrick
Kolkes
Korjuh
Lack
Larry
Laster
Longoria
McGregor of El Paso
McLellany

NAY

Adams of Titus
Alston
Johnson of Bell
LaValle
Lewis
McCoppin
Marlow
Miller
Murray
Niemeyer
Osborn
Petty
Pipkin
Preston
Price
Quilliam
Ratchiff
Read
Richards
Roberts of Dawson
Ross
Sandahl
Schram
Shipley
Sink	
Sluder
Snell
Simpson
Thurmond
Townsend
Tunell
Walker
Wells
Wilson of Trinity
Wilson of Potter

REASON FOR VOTE

I voted no on H. B. 727 because it is impossible to vote money when we do not know the amount needed. It does not provide for any salary for teachers.

LEON THURMAN
REASON FOR VOTE

I voted against the passage of H. B. 727 on engrossment for several reasons - one reason is attributed to the fact that I received more requests against than for such a sales tax bill.

YEZAK

REASON FOR VOTE

April 20, 1961

I voted no on HB 727 because I do not think it is wise to vote for such a tax bill before I have seen the Appropriation Bill and know how much money is needed.

HOMER F. KOLIBA, SR.

REASONS FOR VOTE

April 20, 1961

I voted against House Bill No. 727, the General Sales Tax Bill, by Wilson of Trinity, because the General Appropriations Bill is still tied up in the House Appropriations Committee, and I do not know what amount of new taxes will be required to operate the State Government until the information is furnished.

In the past, the Appropriations Bill has been considered before new or additional taxes were levied. No new taxes should be imposed until an intelligent study can be made of appropriations necessary to operate economically our State Government.

SAM H. PARSONS MARSHALL O. BELL

AUTHORIZING CERTAIN CORRECTIONS IN H. B. NO. 727

Mr. Wilson of Trinity asked unanimous consent that the engrossing and enrolling clerk be authorized, with the approval of the Speaker, to correct on engrossment the Act, Article, Section, and Subsection structure of H. B. 727 to make same correct and consistent, but with no substantive change in text.

There was no objection offered and it was so ordered.

CONGRATULATORY RESOLUTION ADOPTED


On the motion of Mr. Watson, the names of all the Members of the House were added to the resolution as signers thereof.

PROCLAIMING NATIONAL YOUTH DAY IN TEXAS

Mr. Smith of Jefferson offered the following resolution:

H. C. R. No. 82

Whereas, The day of Monday, May 1, 1961 has been officially proclaimed as Elks National Youth Day, and many State, County and City officials throughout the United States have pledged their cooperation in this observance in honor of American Youth; and

 Whereas, Many patriotic groups throughout this Nation are taking part in Youth Day activities and extend deserved recognition to American Youth for its steadfast opposition and rejection of Communist propaganda and other subversive influences, and for their abiding and unyielding dedication to the principles of our democratic society; and

 Whereas, The Elks National Foundation has, throughout the years, enabled some four thousand (4,000) deserving but financially needy young students to go through college, and these young men and women have proved their dedication to the principles upon which this government was founded; and

 Whereas, More than a million members of the Benevolent and Protective Order of Elks, many of whom are members of lodges in the State of Texas, will observe this day in recognition of American Youth; now, therefore, be it

Resolved by the House of Representatives of the State of Texas, that the citizens of this State be urged to cooperate in the observance of this day and that suitable programs honoring the young people of America be arranged, and that these observances call public attention to the principles of democracy upon which the American government was founded, and encourage our young men and women to follow the path of good citizenship; and, be it further

Resolved, That the Benevolent and Protective Order of Elks and their National, State, and local lodges be commended for their patriotic and unselfish dedication to the ideals of...
Liberty, Justice, and Honor, and to the ideals of democratic government under the Constitution of the United States of America.

The resolution was adopted.

CONGRATULATING THE HONORABLE CHARLES L. BALLMAN

Mr. Cotten offered the following resolution:

H. S. B. No. 538

Whereas, On April 22, 1930, Charles L. Ballman was born to a destiny of judicious representation of the hardy people in the High Plains of the Texas Panhandle who live in that 884 square miles of Hutchinson County which produces livestock and oil and gas and wheat and great men; and

Whereas, Charlie Ballman, who has always served faithfully in the House of Representatives from District 86, and his lovely wife, Rose Marie, live in Borger with their children, Charles L. (Chuck) Ballman, Jr., Kathy and Clay; and

Whereas, Charlie Ballman is celebrating his thirty-first birthday in this Fifty-seventh Legislature as the astute Chairman of the Revenue and Taxation Committee, and as he does so, his decisions are important to every citizen of Texas. In this respect, our fellow Member strives to use his innate courage to meet all obstacles without defeat and refuses ever to let temporary losses interfere with his long-range goals to serve the best interests of Texas. Daily, he exercises control of his mind so that fear and doubt and self-imposed limitations have no place in his actions. He is vigilant and he maintains a positive attitude in all negotiations; and

Whereas, Proponents and opponents know where Charlie Ballman stands and they act accordingly with full knowledge that combat or cooperation will be maintained on an open scale; and

Whereas, Charlie Ballman, as an attorney, as a legislator working for a fair tax plan, as a dedicated private citizen and as a friend, operates with a philosophy pointedly expressed in the old Hindu pro-verb which reads: "Help thy brother's boat across, and lo! thine own has reached the shore"; and

Whereas, if straight talk and an attitude of good will and a reasonable tolerance can do the job for Texas, the tall man from Borger will serve both the people and his own ideals to satisfactory achievement of a difficult task; now, therefore, be it

Resolved, That the House of Representatives of the Fifty-seventh Legislature congratulates Charlie Ballman on his birthday and wishes him many more as a Member of the House.

The resolution was read.

On the motion of Mr. Wilson of Potter the names of all members of the House were added to the Resolution as signers thereof.

The resolution was adopted.

HOUSE BILL NO. 61 ON PASSAGE TO ENGROSSMENT

The Speaker laid before the House, as postponed business, on its passage to engrossment,

H. B. No. 61, A bill to be entitled "An Act setting up health standards for Grade A milk for pasteurization produced outside of the State of Texas and imported to points within; and requiring that such persons authorizing the importation of such milk certify that the milk is produced in accordance with standards for the production of milk in Texas; providing for inspection of foreign milk producers; providing for permit fees; providing for penalties, and declaring an emergency."

The bill having heretofore been read second time, and further consideration was postponed.

Mr. Burgess moved that further consideration of House Bill No. 61 be postponed until next Tuesday, April 25, at 11:00 o'clock a.m.

The motion prevailed.

REMARKS BY THE HONORABLE V. E. BERRY

On motion of Mr. Lewis, the following remarks of Mr. Barry, made in addressing the House on personal privilege on today, were ordered printed in the Journal:

Mr. Speaker and Members of the House.
In view of Mr. Heatly's motion yesterday to recommit my bill to the State Affairs Committee I feel that I have to call to your attention a situation that I don't like. This session of the Legislature is about over and I feel that I must take this time to get a thing or two off my chest.

Mr. Speaker, I'm going to talk about a sense of fairness. You and most of the members of the House know I am the author of House Bill 777. This bill has one -- and only one -- purpose. It would permit the voters of Texas to express their opinion at the polls next November on the question of legalizing parimutuel horse race betting.

There is room for an honest difference of opinion on this question. There is no room for argument on the proposition that the people are not entitled to a straightforward vote on the question. My bill provides a way to settle this question for free, and settle it once and for all. The referendum at the next general election in 1962 wouldn't cost anything like the special senate election where 71 names were on the ballot. This question would be taken care of in about three or four lines on the ballot.

If this referendum question should be defeated at the polls, it wouldn't be heard of for the next 20 years. If we do not settle this question, I believe a parimutuel bill will be introduced every session until the question is settled. My opinion is, this bill should be known as the "Ministerial Bill" as the ministers have everything to win and nothing to lose.

Mr. Speaker, I don't like to lose, but I can be as good a loser as the next guy if I feel that I have been given a square and fair chance. I do not expect to sit quiet in this House when it looks to me like delaying tactics are being used to keep my bill from coming up for a vote.

I was elected to this House just like every other member was elected. We all took the same Constitutional oath of office. I walk the same aisles and abide by the same rules as all other members.

Mr. Speaker, I am appealing to you for the same treatment. I know the pressure is on, Mr. Speaker, I know you have some close friends who oppose my bill. Some of your friends want to keep my bill off the floor of this House. I also know, Mr. Speaker, you have a keen sense of fairness.

I understand each member has a right to one suspension of the rules to get his bill up. Mr. Speaker, you have had my letter since March 28th asking that House Bill 777 be placed on the suspension calendar. I found out that several bills were placed on the suspension calendar last Monday and the Monday before that ahead of House Bill 777.

Mr. Heatly in a speech to this House Monday a week ago said he'd die fighting for my rights. I think everyone in the House knows I have a right for this bill to come up and that I have been bypassed. I want someone, like Mr. Heatly said, to start standing up for my rights.

Search your conscience real good. Let the records be made open, and the people can be depended on to make the right decision.

Mr. Speaker, I am making this special public request to you and the House to let House Bill 777 be heard as soon as possible. Why should I be denied my right to use my suspension when others get theirs? I think I am entitled to use my suspension just like the next man.

If any of you need copies of my bill to mail back home, please come by my desk as I have plenty of them.

Thank all of you for listening. I'll be waiting.

ADJOURNMENT

Mr. James moved that the House adjourn until 6:20 o'clock p.m. today.

Mr. Chapman moved that the House adjourn until 11:00 o'clock a.m. next Monday.

Mr. McGregor of El Paso moved that the House adjourn until 10:00 o'clock a.m. tomorrow.

Mr. Preston moved that the House adjourn until 10:00 o'clock a.m. tomorrow.

A record vote was requested on the motion to adjourn until 6:20 o'clock p.m. today.
The motion to adjourn until 6:20 o'clock p.m. today prevailed by the following vote:

Yeas—74

Adams of Lubbock, Johnson of Bell
Adams of Titus, Jones of Dallas
Allen, Latimer
Andrews, La Valle
Atwell
Banfield, Mrs.
Barnes
Bartram, Mather
Bell
Berry
Bilal
Blaine
Boytson
Buckman
Burgess
Butler
Cole of Harris
Cole of Hunt
Córdova
Cory
Cowles
Crain
Curvington
de la Garza
Duffy
Fairchild
Foreman
Garison
Gibbems
Glasing
Grover
Harding
Healy
Huebner
Hughes of Dallas
James
Jarvis
Johnson of Dallas

Nays—65

Leaverton
Longoria
McCook
McGregor
Markgraf
Martin
Moore
Mullen
Niemeyer
Peary
Pierce
Richardson
Roberts of Hill
Ross
Schramp
Sleuss
Bass
Bridges
Crews
Lewis

Absents—Excused

Cook
Floyd

The Benediction was offered by the Reverend Clinton Kersey, Chaplain.

In accordance with the motion to adjourn, the House at 6:19 o'clock p.m., adjourned until 6:20 o'clock p.m. today, April 20.

APPENDIX

STANDING COMMITTEE REPORTS

The following Committees have filed favorable reports on bills and resolutions as follows:

Agriculture: S. B. No. 164.


State Hospitals and Special Schools: S. B. No. 463.

REPORTS OF COMMITTEE ON ENGROSSED BILLS

Austin, Texas, April 18, 1961
Hon. James A. Turman, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred

H. J. R. No. 70, proposing an Amendment to Article IX of the Constitution of Texas.

Has carefully compared same and finds it correctly engrossed.

H. G. WELLS, Chairman.

Austin, Texas, April 19, 1961
Hon. James A. Turman, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred

H. B. No. 32, A bill to be entitled "An Act concerning the payment of aid and compensation to persons who have paid fines or served sentences for crimes of which they are not guilty; and declaring an emergency."

Has carefully compared same and finds it correctly engrossed.

H. G. WELLS, Chairman.

Austin, Texas, April 19, 1961
Hon. James A. Turman, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred

H. B. No. 11, A bill to be entitled "An Act creating the University of Houston as a State-supported institution of higher education; providing for its management and administration; providing that general laws affecting other State institutions of higher learning and not in conflict with this Act shall apply to the University of Houston; repealing laws in conflict; providing for severability; providing an effective date; and declaring an emergency."

Has carefully compared same and finds it correctly engrossed.

H. G. WELLS, Chairman.

Austin, Texas, April 19, 1961
Hon. James A. Turman, Speaker of the House of Representatives.

Sir: Your Committee on Engrossed Bills to whom was referred

H. B. No. 34, A bill to be entitled "An Act relating to duties of the County Health Officer; amending
FIFTIETH DAY
(Thursday, April 20, 1961)

The House met at 6:20 o'clock p.m., pursuant to adjournment, and was called to order by the Speaker.

The roll of the House was called and the following Members were present:

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<td>Ballman</td>
<td>Republican</td>
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<td>Barfield, Mrs.</td>
<td>Democratic</td>
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<td>Barlow</td>
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<td>Floyd</td>
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<tr>
<td>Oates</td>
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A quorum of the House was announced present.

The Invocation was offered by the Reverend Clinton Kersey, Chaplain.

LEAVES OF ABSENCE GRANTED

The following Members were granted leaves of absence on account of important business:

<table>
<thead>
<tr>
<th>Name</th>
<th>Party</th>
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<tbody>
<tr>
<td>McGregor</td>
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<tr>
<td>McIvay</td>
<td>Democratic</td>
</tr>
<tr>
<td>McLeallen</td>
<td>Democratic</td>
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</table>

Mr. McIvay of McLeallen for today on motion of Mr. Woods.

Mr. Cook for today on motion of Mr. Heatly.

Mr. Bridges for today on motion of Mr. Townsend.

The following Member was granted leave of absence for today on account of illness:

<table>
<thead>
<tr>
<th>Name</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>McCormick</td>
<td>Democratic</td>
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</tbody>
</table>

LaValle             | Republican  |
Leaverton           | Republican  |
Lewis               | Democratic  |
Longoria            | Republican  |
McGeough            | Republican  |
McGregor            | Republican  |
McIvay              | Republican  |
Makoff              | Republican  |
Markgraf            | Republican  |
Martin              | Republican  |
Miller              | Republican  |
Moore               | Republican  |
Mulren              | Republican  |
Murray              | Republican  |
Mutschler           | Republican  |
Niemeyer            | Republican  |
Nugent              | Republican  |
Osborn              | Republican  |
Parsche             | Republican  |
Pearce              | Republican  |
Peele               | Republican  |
Pettis              | Republican  |
Pieratt             | Republican  |
Pillim              | Republican  |
Preston             | Republican  |
Price               | Republican  |
Quilliam            | Republican  |
Rapp                | Republican  |
Read                | Republican  |
Richards            | Republican  |
Richardson          | Republican  |
Roberts             | Republican  |
Robertson           | Republican  |
Roper               | Republican  |
Sapp                | Republican  |
Slayton             | Republican  |
Slaughter           | Republican  |
Springer            | Republican  |
Speer               | Republican  |
Spilman             | Republican  |
Springer            | Republican  |
Stewart             | Republican  |
Stewart             | Republican  |
Thompson            | Republican  |
Tomey               | Republican  |
Walker              | Republican  |
Wells               | Republican  |
Whitfield           | Republican  |
Wilson              | Republican  |
Williams            | Republican  |
Wright              | Republican  |
Wynn                | Republican  |
Young               | Republican  |
Zakowski            | Republican  |