

SUBJECT: One-time prepayment in fiscal 2013 of certain taxes due in fiscal 2014

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 24 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas

0 nays

3 absent — Dukes, Martinez, Morrison

WITNESSES: None

DIGEST: CSHB 3640 would require one-time prepayments of certain franchise, motor fuels, alcohol, and sales taxes.

Franchise tax. The bill would require certain businesses that grossed more than \$2 million a year to make a prepayment on their franchise taxes that were due on May 15, 2014. The prepayment would be equal to 25 percent of the franchise tax payment due by the company on May 15, 2012. The prepayment would be due no later than July 31, 2013, and would be counted as a credit on franchise taxes due on May 15, 2014. A large taxable entity that failed to remit the tax prepayment would be issued a 10-percent penalty on the prepayment.

The bill would require the comptroller to deposit the prepayments into the General Revenue Fund, instead of placing a portion of the funds into the Property Tax Relief Fund, as required by current statute.

The bill would define a “large taxable entity” as one that was required by the comptroller to file its franchise taxes electronically. This would be a business that grossed more than \$2 million a year.

Motor fuels taxes. CSHB 3640 would require each licensed distributor and licensed importer of gasoline or diesel to make a prepayment on its motor fuels taxes due in September 2013. The prepayment would be 25 percent of the motor fuels taxes accrued during July 2013 and would be

due on August 30, 2013. The prepayment would be counted as a credit on motor fuels taxes due that were due in September 2013.

The bill would prevent the comptroller from allocating the funds collected under the prepayment provisions to Fund 6 and the Available School Fund. Instead they would be diverted to general revenue. Those funds would be made whole in fiscal 2014.

Alcohol taxes. The bill would require that each permittee who was liable to pay alcoholic beverage taxes on liquor, ale and malt liquor, or beer to make a prepayment on its alcoholic beverage taxes due in September 2013. The bill also would require permittees authorized to sell alcoholic beverages on planes and trains to make a prepayment. The prepayment would be 25 percent of the amount of taxes due during August 2013 and would be counted as a credit on alcoholic beverage taxes due in September 2013.

Sales tax. The bill would require a taxpayer who owes sales taxes to make a prepayment on his or her sales taxes due in September 2013. The prepayment would be 25 percent of the amount of taxes due in August 2013 and would be counted as a credit on sales taxes due in September 2013.

Effective date. The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 3640 would raise \$1.4 billion in revenue for fiscal 2012-13 by requiring a one-time prepayment of taxes due in fiscal 2014.

The bill would allow a one-time acceleration of tax payments to boost general revenue during the upcoming fiscal biennium that would help pay for essential programs like education and health care. Businesses would make a prepayment, but they would receive a credit on that payment in the next tax period. While the prepayments would not be painless for businesses to make, they are the lesser evil when compared to further cuts in essential state programs. Legislators should use every tool available to fund spending priorities essential to the state. Texas businesses realize that certain investments must be made in public services in order to keep the economy healthy and demand strong for their goods and services.

Prepayment of these taxes would not overly burden Texas businesses, which generally keep taxes collected for a period of time before remitting

them to the state. For instance, motor fuels taxes collected on gasoline sales in January are not remitted to the state until late February. Under the bill, prepayments of taxes simply would require remitting some of the taxes during the month they came in rather than holding them for a month before remitting them.

Businesses that folded between the time they made their prepayment and when they would have claimed the tax credit would have their credit applied to their final tax payments.

OPPONENTS
SAY:

CSHB 3640 would be hard on Texas businesses during a rough economy. Businesses collect sales, motor fuels, and mixed-beverage taxes on behalf of the state from their customers when they make a sale. Certain small businesses are able to balance their books only by floating the collected taxes before remitting them to the state. If the state collects early, it denies businesses the ability to use those funds as part of their cash flow. While these smaller businesses should not treat state taxes this way, the reality is that many do, and it is an important part of their cash flow.

The franchise tax prepayment requirement would be onerous for many businesses. The franchise tax, unlike the sales, motor fuels, and mixed-beverage taxes, does not come directly from the consumer. Instead it comes from a business's bottom line. Further, the other tax prepayments would be based on a quarter of a month's worth of taxes, while the franchise tax prepayment would be based on a quarter of a year's worth of tax.

OTHER
OPPONENTS
SAY:

The bill only should require those businesses that grossed at least \$10 million a year to pay the franchise tax speed-up. It is better to exempt smaller companies who are not as capable of making these payments as larger companies are.

NOTES:

According to the fiscal note, the bill would increase general revenue by \$1.4 billion in fiscal 2013 and lower it by the same amount in fiscal 2014. The fiscal note shows that losses to the Available School Fund and Fund 6 that would be incurred in fiscal 2013 would be made up in fiscal 2014.

The companion bill, SB 1587 by Ogden, was referred to the Senate Finance Committee on March 23.