

By: Wilson

H.B. No. 3143

A BILL TO BE ENTITLED

AN ACT

relating to administration of the sales and use tax and compliance with the Streamlined Sales and Use Tax Agreement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 142.002, Tax Code, is amended by amending Subdivisions (1), (2), (3), (4), and (6) and adding Subdivisions (3-a), (3-b), and (3-c) to read as follows:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on November 12, 2002 [~~January 27, 2001~~].

(2) "Certified automated system" means software certified under [~~jointly by the states that are signatories to~~] the agreement to calculate [~~compute~~] the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(3) "Certified service provider" means an agent certified under [~~jointly by the states that are signatories to~~] the agreement to perform all of the seller's sales tax functions, other than the seller's obligation to remit tax on the seller's own purchases.

(3-a) "Model 1 seller" means a seller that has selected a certified service provider as the seller's agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on the seller's own purchases.

1 (3-b) "Model 2 seller" means a seller that has
2 selected a certified automated system to perform part of the
3 seller's sales and use tax functions, but retains responsibility
4 for remitting the tax.

5 (3-c) "Model 3 seller" means a seller that has sales in
6 at least five member states, has total annual sales revenue of at
7 least \$500 million, has a proprietary system that calculates the
8 amount of tax due each jurisdiction, and has entered into a
9 performance agreement with the member states that establishes a tax
10 performance standard for the seller. The term includes an
11 affiliated group of sellers using the same proprietary system.

12 (4) "Sales tax" means a sales tax administered or
13 computed under Chapter 151 [~~this subtitle or Subtitle C, Title 3, or~~
14 ~~in a similar manner~~].

15 (6) "Use tax" means a use tax administered or computed
16 under Chapter 151 [~~this subtitle or Subtitle C, Title 3, or in a~~
17 ~~similar manner~~].

18 SECTION 2. Section 142.005, Tax Code, is amended by adding
19 Subsection (c) to read as follows:

20 (c) The comptroller may enter into the agreement on behalf
21 of this state if the governor, lieutenant governor, speaker of the
22 house of representatives, and the comptroller unanimously agree
23 that it would be in this state's best interest to be a signatory to
24 the agreement.

25 SECTION 3. Chapter 142, Tax Code, is amended by adding
26 Section 142.0055 to read as follows:

27 Sec. 142.0055. RULES. The comptroller may adopt rules

1 relating to the administration and collection of the sales and use
2 tax as necessary to comply with the agreement, including rules
3 establishing the requirements for a seller to be a Model 1 seller,
4 Model 2 seller, or Model 3 seller.

5 SECTION 4. Chapter 142, Tax Code, is amended by adding
6 Section 142.011 to read as follows:

7 Sec. 142.011. SETTLEMENT OF TAX, PENALTY, AND INTEREST. On
8 or after the later of the date on which the agreement takes effect
9 as provided by the terms of the agreement or this state becomes a
10 signatory to the agreement, the comptroller may settle a claim for
11 tax, penalty, or interest on tax imposed by Chapter 151 if necessary
12 for the comptroller to comply with the terms of the agreement.

13 SECTION 5. Subchapter A, Chapter 151, Tax Code, is amended
14 by adding Section 151.012 to read as follows:

15 Sec. 151.012. EFFECTIVE DATE OF TAX RATE CHANGES. (a) A
16 change in the rate of the tax imposed under Sections 151.051 and
17 151.101 must take effect on the first day of a calendar quarter.

18 (b) If the performance of a taxable service begins before
19 the effective date of a change in the tax rate and the performance
20 will not be completed until after that effective date, the change in
21 the tax rate applies to the first billing period for the service
22 performed on or after that effective date.

23 SECTION 6. Section 151.103, Tax Code, is amended by adding
24 Subsection (d) to read as follows:

25 (d) A retailer who holds a sales tax permit issued by the
26 comptroller under this chapter shall collect any applicable local
27 use tax that is due from a purchaser even if the retailer is not

1 engaged in business in the local jurisdiction into which the
2 taxable item is shipped or delivered.

3 SECTION 7. Section 151.152(b), Tax Code, is amended to read
4 as follows:

5 (b) A resale certificate must:

6 (1) be signed by the purchaser or contain an
7 electronic form of the purchaser's signature authorized by the
8 comptroller and contain the purchaser's name and address;

9 (2) state the purchaser's tax permit number or that the
10 purchaser's application for a tax permit is pending before the
11 comptroller; and

12 (3) contain a description of the tangible personal
13 property sold, leased, or rented by the purchaser in the regular
14 course of business or transferred as an integral part of a taxable
15 service performed in the regular course of business.

16 SECTION 8. Section 151.202, Tax Code, is amended by adding
17 Subsection (c) to read as follows:

18 (c) A person desiring to be a seller in this state must agree
19 to collect any applicable local use tax that may be imposed by a
20 local jurisdiction even if the seller is not engaged in business in
21 the local jurisdiction into which the taxable item is shipped or
22 delivered.

23 SECTION 9. Section 151.314, Tax Code, is amended by
24 amending Subsections (c), (e), (f), and (g) and adding Subsections
25 (c-1), (c-2), and (c-3) to read as follows:

26 (c) "Food products" shall not include:

27 (1) drugs, medicines, tonics, vitamins, dietary

1 supplements, and medicinal preparations in any form;

2 (2) carbonated and noncarbonated packaged soft
3 drinks, which are nonalcoholic beverages that contain natural or
4 artificial sweeteners [~~and diluted juices and ice and candy~~];

5 (3) ice; or

6 (4) candy [~~foods and drinks (which include meals, milk~~
7 ~~and milk products, fruit and fruit products, sandwiches, salads,~~
8 ~~processed meats and seafoods, vegetable juices, ice cream in cones~~
9 ~~or small cups) served, prepared, or sold ready for immediate~~
10 ~~consumption in or by restaurants, lunch counters, cafeterias,~~
11 ~~vending machines, hotels, or like places of business or sold ready~~
12 ~~for immediate consumption from pushcarts, motor vehicles, or any~~
13 ~~other form of vehicle~~].

14 (c-1) For purposes of this section, diluted juice that is
15 more than 50 percent vegetable or fruit juice by volume is not
16 considered to be a soft drink.

17 (c-2) The exemption provided by Subsection (a) does not
18 include the following prepared food:

19 (1) food, food products, and drinks, including meals,
20 milk and milk products, fruit and fruit products, sandwiches,
21 salads, processed meats and seafoods, vegetable juice, and ice
22 cream in cones or small cups, served, prepared, or sold ready for
23 immediate consumption in or by restaurants, lunch counters,
24 cafeterias, vending machines, hotels, or like places of business or
25 sold ready for immediate consumption from pushcarts, motor
26 vehicles, or any other form of vehicle;

27 (2) food sold in a heated state or heated by the

1 seller; or

2 (3) two or more food ingredients mixed or combined by
3 the seller for sale as a single item, including items that are sold
4 in an unheated state by weight or volume as a single item, but not
5 including food that is only cut, repackaged, or pasteurized by the
6 seller.

7 (c-3) The exemption provided by Subsection (a) includes:

8 (1) bakery items sold without plates or other eating
9 utensils, including bread, rolls, buns, biscuits, bagels,
10 croissants, pastries, doughnuts, Danish, cakes, tortes, pies,
11 tarts, muffins, bars, cookies, and tortillas; and

12 (2) eggs, fish, meat, and poultry, and foods
13 containing these raw animal foods, that require cooking by the
14 consumer as recommended by the Food and Drug Administration in
15 Chapter 3, Section 401.11 of its Food Code to prevent food-borne
16 illness and any other food that requires cooking by the consumer
17 before the food is edible.

18 (e) Food products, candy, and soft drinks [~~carbonated~~
19 ~~beverages, and diluted juices~~] are exempted from the taxes imposed
20 by this chapter if sold at an exempt sale qualifying under this
21 subsection or if stored or used by the purchaser of the item at the
22 exempt sale. A sale is exempted under this subsection if:

23 (1) the sale is made by a person under 19 years old who
24 is a member of a nonprofit organization devoted to the exclusive
25 purpose of education or religious or physical training or by a group
26 associated with a public or private elementary or secondary school;

27 (2) the sale is made as a part of a fund-raising drive

1 sponsored by the organization or group; and

2 (3) all net proceeds from the sale go to the
3 organization or group for its exclusive use.

4 (f) The exemption provided by this section does
5 ~~[Subsections (a), (b), and (c) of this section do]~~ not apply to the
6 sale of food products through the use or operation of a vending
7 machine for which ~~[edible products for human consumption]~~ the
8 receipts or sales prices are determined by ~~[price for which are~~
9 ~~taxed subject to]~~ Section 151.007(d) ~~[of this code]~~.

10 (g) The exemption provided by Subsection (d)(3) does not
11 apply to food products, meals, soft drinks, and candy ~~[for human~~
12 ~~consumption]~~ sold to a person confined in a correctional facility
13 operated under the authority or jurisdiction of or under contract
14 with this state or a political subdivision of the state.

15 SECTION 10. Section 151.317(a), Tax Code, is amended to
16 read as follows:

17 (a) Subject to Subsection (d), gas and electricity are
18 exempted from the taxes imposed by this chapter when sold for:

19 (1) residential use;

20 (2) use in powering equipment exempt under Section
21 151.318 or 151.3185 by a person processing tangible personal
22 property for sale as tangible personal property, other than
23 preparation or storage of prepared food described by Section
24 151.314(d) ~~[food for immediate consumption];~~

25 (3) use in lighting, cooling, and heating in the
26 manufacturing area during the actual manufacturing or processing of
27 tangible personal property for sale as tangible personal property,

1 other than preparation or storage of prepared food described by
2 Section 151.314(d) [~~food for immediate consumption~~];

3 (4) use directly in exploring for, producing, or
4 transporting, a material extracted from the earth;

5 (5) use in agriculture, including dairy or poultry
6 operations and pumping for farm or ranch irrigation;

7 (6) use directly in electrical processes, such as
8 electroplating, electrolysis, and cathodic protection;

9 (7) use directly in the off-wing processing, overhaul,
10 or repair of a jet turbine engine or its parts for a certificated or
11 licensed carrier of persons or property;

12 (8) use directly in providing, under contracts with or
13 on behalf of the United States government or foreign governments,
14 defense or national security-related electronics, classified
15 intelligence data processing and handling systems, or
16 defense-related platform modifications or upgrades;

17 (9) a direct or indirect use, consumption, or loss of
18 electricity by an electric utility engaged in the purchase of
19 electricity for resale; or

20 (10) use in timber operations, including pumping for
21 irrigation of timberland.

22 SECTION 11. Section 151.317(c), Tax Code, as amended by
23 Chapters 631 and 1467, Acts of the 76th Legislature, Regular
24 Session, 1999, is reenacted to read as follows:

25 (c) In this section, "residential use" means use:

26 (1) in a family dwelling or in a multifamily apartment
27 or housing complex or building or in a part of a building occupied

1 as a home or residence when the use is by the owner of the dwelling,
2 apartment, complex, or building or part of the building occupied;
3 or

4 (2) in a dwelling, apartment, house, or building or
5 part of a building occupied as a home or residence when the use is by
6 a tenant who occupies the dwelling, apartment, house, or building
7 or part of a building under a contract for an express initial term
8 for longer than 29 consecutive days.

9 SECTION 12. Section 321.003, Tax Code, is amended to read as
10 follows:

11 Sec. 321.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles
12 A and B, Title 2, and Chapters 142 and ~~[Chapter]~~ 151 apply to the
13 taxes and to the administration and enforcement of the taxes
14 imposed by this chapter in the same manner that those laws apply to
15 state taxes, unless modified by this chapter.

16 SECTION 13. Section 321.203, Tax Code, is amended by
17 amending Subsections (a), (b), (e), and (g) and adding Subsections
18 (e-1), (e-2), (g-1), (g-2), (g-3), and (l) to read as follows:

19 (a) A sale of a taxable item occurs within the municipality
20 in which the sale is consummated. A sale is consummated ~~[as~~
21 ~~provided by this section regardless of the place]~~ where ~~[transfer~~
22 ~~of title or]~~ possession or delivery occurs.

23 (b) Except as provided by Subsection (l), if the purchaser
24 takes possession of tangible personal property or makes first use
25 of a taxable service at the retailer's ~~[If a retailer has only one]~~
26 place of business in this state, the sale is ~~[all of the retailer's~~
27 ~~retail sales are]~~ consummated at that place of business ~~[except as~~

1 ~~provided by Subsection (e)].~~

2 (e) Except as provided by Subsection (1), if the purchaser
3 does not take possession of tangible personal property or make
4 first use of a taxable service at the retailer's place of business,
5 the [A] sale is consummated at the location in this state to which
6 the tangible personal property [a taxable item] is shipped or
7 delivered or at the location in this state at which the taxable
8 service is first used [which possession is taken by the customer if
9 transfer of possession of a taxable item occurs at, or shipment or
10 delivery of the item originates from, a location in this state other
11 than a place of business of the retailer and if:

12 ~~[(1) the retailer is an itinerant vendor who has no~~
13 ~~place of business,~~

14 ~~[(2) the retailer's place of business where the~~
15 ~~purchase order is initially received or from which the retailer's~~
16 ~~salesman who took the order operates is outside this state, or~~

17 ~~[(3) the purchaser places the order directly with the~~
18 ~~retailer's supplier and the item is shipped or delivered directly~~
19 ~~to the purchaser by the supplier].~~

20 (e-1) Except as provided by Subsection (1), if Subsections
21 (b) and (e) do not apply, the sale is consummated at the location
22 indicated by an address of the purchaser that is available from the
23 retailer's business records that are maintained in the ordinary
24 course of the retailer's business, if use of this address does not
25 constitute bad faith. If the retailer does not have an address in
26 the retailer's business records for the purchaser and another
27 address is not available, the sale is consummated at the location

1 indicated by an address for the purchaser obtained by the retailer
2 at the time of the transaction, including a billing address.

3 (e-2) Except as provided by Subsection (1), if Subsections
4 (b), (e), and (e-1) do not apply, the sale is consummated at the
5 retailer's place of business from which the taxable item is
6 delivered or shipped.

7 (g) The [~~sale of telecommunications services is consummated~~
8 ~~at the location of the telephone or other telecommunications device~~
9 ~~from which the call or other transmission originates, unless the~~
10 ~~point of origin cannot be determined, in which case the sale is at~~
11 ~~the address to which the call is billed. However, the]~~ sale of
12 mobile telecommunications services is consummated in accordance
13 with [~~the provisions of]~~ Section 151.061.

14 (g-1) The sale of telecommunications services sold based on
15 a price that is measured by individual calls is consummated at the
16 location where the call originates and terminates or the location
17 where the call either originates or terminates and at which the
18 service address is also located.

19 (g-2) Except as provided by Subsection (g-3), the sale of
20 telecommunications services sold on a basis other than on a
21 call-by-call basis is consummated at the location of the customer's
22 place of primary use. In this subsection, "place of primary use"
23 has the meaning assigned by Section 151.061(a)(2).

24 (g-3) A sale of post-paid calling services is consummated at
25 the location of the origination point of the telecommunications
26 signal as first identified by the seller's telecommunications
27 system or by information received by the seller from the seller's

1 service provider if the system used to transport the signal is not
2 that of the seller.

3 (1) A lease or rental of tangible personal property other
4 than transportation property that requires recurring periodic
5 payments is consummated as provided by this subsection. The first
6 periodic payment is consummated at the location prescribed by
7 Subsection (b), (e), (e-1), or (e-2), as applicable. Periodic
8 payments made subsequent to the first payment are consummated at
9 the primary property location in this state. In this subsection:

10 (1) "Primary property location" means the address for
11 the leased or rented property provided by the lessee to the lessor.
12 If an address is not provided, the primary property location is the
13 address of the lessee that is available to the lessor from the
14 lessor's records maintained in the ordinary course of business, if
15 use of this address does not constitute bad faith. The primary
16 property location is not altered by the use of leased or rented
17 tangible personal property by the lessee at different locations for
18 a period that is less than the payment period. If an address is not
19 available, the lease or rental is consummated at the location where
20 the lessee takes possession of the tangible personal property or to
21 which the tangible personal property is delivered or shipped.

22 (2) "Transportation property" means a locomotive or
23 railcar that is used to carry persons or property in interstate
24 commerce and aircraft that is operated by an air carrier authorized
25 and certificated by the United States Department of Transportation
26 or another federal or foreign authority to engage in the carriage of
27 persons or property in interstate or foreign commerce. The term

1 includes a container designed for use on and component parts
2 attached to or secured on a transportation property.

3 SECTION 14. Section 323.003, Tax Code, is amended to read as
4 follows:

5 Sec. 323.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles
6 A and B, Title 2, and Chapters 142 and ~~[Chapter]~~ 151 apply to the
7 taxes and to the administration and enforcement of the taxes
8 imposed by this chapter in the same manner that those laws apply to
9 state taxes unless modified by this chapter.

10 SECTION 15. Section 323.203, Tax Code, is amended by
11 amending Subsections (a), (b), (e), and (g) and adding Subsections
12 (e-1), (e-2), (g-1), (g-2), (g-3), and (l) to read as follows:

13 (a) A sale of a taxable item occurs within the county in
14 which the sale is consummated. A sale is consummated ~~[as provided~~
15 ~~by this section regardless of the place]~~ where ~~[transfer of title~~
16 ~~or]~~ possession or delivery occurs.

17 (b) Except as provided by Subsection (l), if the purchaser
18 takes possession of tangible personal property or makes first use
19 of a taxable service at the retailer's ~~[If a retailer has only one]~~
20 place of business in this state, the sale is ~~[all of the retailer's~~
21 ~~retail sales are]~~ consummated at that place of business ~~[except as~~
22 ~~provided by Subsection (e)]~~.

23 (e) Except as provided by Subsection (l), if the purchaser
24 does not take possession of tangible personal property or make
25 first use of a taxable service at the retailer's place of business,
26 the ~~[A]~~ sale is consummated at the location in this state to which
27 the tangible personal property ~~[a taxable item]~~ is shipped or

1 delivered or at the location in this state at which the taxable
2 service is first used [~~which possession is taken by the customer if~~
3 ~~transfer of possession of a taxable item occurs at, or shipment or~~
4 ~~delivery of the taxable item originates from, a location in this~~
5 ~~state other than a place of business of the retailer and if:~~

6 ~~[(1) the retailer is an itinerant vendor who has no~~
7 ~~place of business;~~

8 ~~[(2) the retailer's place of business where the~~
9 ~~purchase order is initially received or from which the retailer's~~
10 ~~salesman who took the order operates is outside this state; or~~

11 ~~[(3) the purchaser places the order directly with the~~
12 ~~retailer's supplier and the taxable item is shipped or delivered~~
13 ~~directly to the purchaser by the supplier].~~

14 (e-1) Except as provided by Subsection (1), if Subsections
15 (b) and (e) do not apply, the sale is consummated at the location
16 indicated by an address of the purchaser that is available from the
17 retailer's business records that are maintained in the ordinary
18 course of the retailer's business, if use of this address does not
19 constitute bad faith. If the retailer does not have an address in
20 the retailer's business records for the purchaser and another
21 address is not available, the sale is consummated at the location
22 indicated by an address for the purchaser obtained by the retailer
23 at the time of the transaction, including a billing address.

24 (e-2) Except as provided by Subsection (1), if Subsections
25 (b), (e), and (e-1) do not apply, the sale is consummated at the
26 retailer's place of business from which the taxable item is
27 delivered or shipped.

1 (g) ~~The sale of [telecommunications services is consummated~~
2 ~~at the location of the telephone or other telecommunications device~~
3 ~~from which the call or other transmission originates, unless the~~
4 ~~point of origin cannot be determined, in which case the sale is at~~
5 ~~the address to which the call is billed. However, the sale of]~~
6 mobile telecommunications services is consummated in accordance
7 with ~~[the provisions of]~~ Section 151.061.

8 (g-1) The sale of telecommunications services sold based on
9 a price that is measured by individual calls is consummated at the
10 location where the call originates and terminates or the location
11 where the call either originates or terminates and at which the
12 service address is also located.

13 (g-2) Except as provided by Subsection (g-3), the sale of
14 telecommunications services sold on a basis other than on a
15 call-by-call basis is consummated at the location of the customer's
16 place of primary use. In this subsection, "place of primary use"
17 has the meaning assigned by Section 151.061(a)(2).

18 (g-3) A sale of post-paid calling services is consummated at
19 the location of the origination point of the telecommunications
20 signal as first identified by the seller's telecommunications
21 system or by information received by the seller from the seller's
22 service provider if the system used to transport the signal is not
23 that of the seller.

24 (l) A lease or rental of tangible personal property other
25 than transportation property that requires recurring periodic
26 payments is consummated as provided by this subsection. The first
27 periodic payment is consummated at the location prescribed by

1 Subsection (b), (e), (e-1), or (e-2), as applicable. Periodic
2 payments made subsequent to the first payment are consummated at
3 the primary property location in this state. In this subsection:

4 (1) "Primary property location" means the address for
5 the leased or rented property provided by the lessee to the lessor.
6 If an address is not provided, the primary property location is the
7 address of the lessee that is available to the lessor from the
8 lessor's records maintained in the ordinary course of business, if
9 use of this address does not constitute bad faith. The primary
10 property location is not altered by the use of leased or rented
11 tangible personal property by the lessee at different locations for
12 a period that is less than the payment period. If an address is not
13 available, the lease or rental is consummated at the location where
14 the lessee takes possession of the tangible personal property or to
15 which the tangible personal property is delivered or shipped.

16 (2) "Transportation property" means a locomotive or
17 railcar that is used to carry persons or property in interstate
18 commerce and aircraft that is operated by an air carrier authorized
19 and certificated by the United States Department of Transportation
20 or another federal or foreign authority to engage in the carriage of
21 persons or property in interstate or foreign commerce. The term
22 includes a container designed for use on and component parts
23 attached to or secured on a transportation property.

24 SECTION 16. The following provisions of the Tax Code are
25 repealed:

26 (1) Section 151.326(c);

27 (2) Sections 321.203(c) and (d);

1 (3) Sections 323.203(c) and (d); and

2 (4) Chapter 326.

3 SECTION 17. (a) Except as provided by Subsection (b) of
4 this section, this Act takes effect October 1, 2003.

5 (b) Sections 151.103(d) and 151.202(c), Tax Code, as added
6 by this Act, and Sections 321.203 and 323.203, Tax Code, as amended
7 by this Act, take effect July 1, 2004.

8 (c) The change in law made by this Act does not affect taxes
9 imposed before the effective date of this Act, and the former law is
10 continued in effect for purposes of the liability for and
11 collection of those taxes.