

1-1 By: Fraser, Van de Putte S.B. No. 823
1-2 (In the Senate - Filed March 3, 2003; March 10, 2003, read
1-3 first time and referred to Committee on Finance; May 12, 2003,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 10, Nays 0; May 12, 2003, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 823 By: Zaffirini

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to administration of the sales and use tax and compliance
1-10 with the Streamlined Sales and Use Tax Agreement.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 142.002, Tax Code, is amended by
1-13 amending Subdivisions (1), (2), (3), (4), and (6) and adding
1-14 Subdivisions (3-a), (3-b), and (3-c) to read as follows:

1-15 (1) "Agreement" means the Streamlined Sales and Use
1-16 Tax Agreement as amended and adopted on November 12, 2002 [~~January~~
1-17 ~~27, 2001~~].

1-18 (2) "Certified automated system" means software
1-19 certified under [~~jointly by the states that are signatories to~~] the
1-20 agreement to calculate [~~compute~~] the tax imposed by each
1-21 jurisdiction on a transaction, determine the amount of tax to remit
1-22 to the appropriate state, and maintain a record of the transaction.

1-23 (3) "Certified service provider" means an agent
1-24 certified under [~~jointly by the states that are signatories to~~] the
1-25 agreement to perform all of the seller's sales tax functions, other
1-26 than the seller's obligation to remit tax on the seller's own
1-27 purchases.

1-28 (3-a) "Model 1 seller" means a seller that has
1-29 selected a certified service provider as the seller's agent to
1-30 perform all of the seller's sales and use tax functions, other than
1-31 the seller's obligation to remit tax on the seller's own purchases.

1-32 (3-b) "Model 2 seller" means a seller that has
1-33 selected a certified automated system to perform part of the
1-34 seller's sales and use tax functions, but retains responsibility
1-35 for remitting the tax.

1-36 (3-c) "Model 3 seller" means a seller that has sales in
1-37 at least five member states, has total annual sales revenue of at
1-38 least \$500 million, has a proprietary system that calculates the
1-39 amount of tax due each jurisdiction, and has entered into a
1-40 performance agreement with the member states that establishes a tax
1-41 performance standard for the seller. The term includes an
1-42 affiliated group of sellers using the same proprietary system.

1-43 (4) "Sales tax" means a sales tax administered or
1-44 computed under Chapter 151 [~~this subtitle or Subtitle C, Title 3, or~~
1-45 ~~in a similar manner~~].

1-46 (6) "Use tax" means a use tax administered or computed
1-47 under Chapter 151 [~~this subtitle or Subtitle C, Title 3, or in a~~
1-48 ~~similar manner~~].

1-49 SECTION 2. Section 142.005, Tax Code, is amended by adding
1-50 Subsection (c) to read as follows:

1-51 (c) The comptroller may enter into the agreement on behalf
1-52 of this state if the governor, lieutenant governor, speaker of the
1-53 house of representatives, and comptroller unanimously agree that it
1-54 would be in this state's best interest to be a signatory to the
1-55 agreement.

1-56 SECTION 3. Chapter 142, Tax Code, is amended by adding
1-57 Section 142.0055 to read as follows:

1-58 Sec. 142.0055. RULES. The comptroller may adopt rules
1-59 relating to the administration and collection of the sales and use
1-60 tax as necessary to comply with the agreement, including rules
1-61 establishing the requirements for a seller to be a Model 1 seller,
1-62 Model 2 seller, or Model 3 seller.

1-63 SECTION 4. Chapter 142, Tax Code, is amended by adding

2-1 Section 142.011 to read as follows:

2-2 Sec. 142.011. SETTLEMENT OF TAX, PENALTY, AND INTEREST. On
 2-3 or after the later of the date on which the agreement takes effect
 2-4 as provided by the terms of the agreement or this state becomes a
 2-5 signatory to the agreement, the comptroller may settle a claim for
 2-6 tax, penalty, or interest on tax imposed by Chapter 151 if necessary
 2-7 for the comptroller to comply with the terms of the agreement.

2-8 SECTION 5. Subchapter A, Chapter 151, Tax Code, is amended
 2-9 by adding Section 151.012 to read as follows:

2-10 Sec. 151.012. EFFECTIVE DATE OF TAX RATE CHANGES. (a) A
 2-11 change in the rate of the tax imposed under Sections 151.051 and
 2-12 151.101 must take effect on the first day of a calendar quarter.

2-13 (b) If the performance of a taxable service begins before
 2-14 the effective date of a change in the tax rate and the performance
 2-15 will not be completed until after that effective date, the change in
 2-16 the tax rate applies to the first billing period for the service
 2-17 performed on or after that effective date.

2-18 SECTION 6. Section 151.103, Tax Code, is amended by adding
 2-19 Subsection (d) to read as follows:

2-20 (d) A retailer who holds a sales tax permit issued by the
 2-21 comptroller under this chapter shall collect any applicable local
 2-22 use tax that is due from a purchaser even if the retailer is not
 2-23 engaged in business in the local jurisdiction into which the
 2-24 taxable item is shipped or delivered.

2-25 SECTION 7. Subsection (b), Section 151.152, Tax Code, is
 2-26 amended to read as follows:

2-27 (b) A resale certificate must:

2-28 (1) be signed by the purchaser or contain an
 2-29 electronic form of the purchaser's signature authorized by the
 2-30 comptroller and contain the purchaser's name and address;

2-31 (2) state the purchaser's tax permit number or that the
 2-32 purchaser's application for a tax permit is pending before the
 2-33 comptroller; and

2-34 (3) contain a description of the tangible personal
 2-35 property sold, leased, or rented by the purchaser in the regular
 2-36 course of business or transferred as an integral part of a taxable
 2-37 service performed in the regular course of business.

2-38 SECTION 8. Section 151.202, Tax Code, is amended by adding
 2-39 Subsection (c) to read as follows:

2-40 (c) A person desiring to be a seller in this state must agree
 2-41 to collect any applicable local use tax that may be imposed by a
 2-42 local jurisdiction even if the seller is not engaged in business in
 2-43 the local jurisdiction into which the taxable item is shipped or
 2-44 delivered.

2-45 SECTION 9. Section 151.314, Tax Code, is amended by
 2-46 amending Subsections (c), (e), (f), and (g) and adding Subsections
 2-47 (c-1), (c-2), and (c-3) to read as follows:

2-48 (c) "Food products" shall not include:

2-49 (1) drugs, medicines, tonics, vitamins, dietary
 2-50 supplements, and medicinal preparations in any form;

2-51 (2) carbonated and noncarbonated packaged soft
 2-52 drinks, which are nonalcoholic beverages that contain natural or
 2-53 artificial sweeteners [and diluted juices and ice and candy];

2-54 (3) ice; or

2-55 (4) candy [foods and drinks (which include meals, milk
 2-56 and milk products, fruit and fruit products, sandwiches, salads,
 2-57 processed meats and seafoods, vegetable juices, ice cream in cones
 2-58 or small cups) served, prepared, or sold ready for immediate
 2-59 consumption in or by restaurants, lunch counters, cafeterias,
 2-60 vending machines, hotels, or like places of business or sold ready
 2-61 for immediate consumption from pushcarts, motor vehicles, or any
 2-62 other form of vehicle].

2-63 (c-1) For purposes of this section, diluted juice that is
 2-64 more than 50 percent vegetable or fruit juice by volume is not
 2-65 considered to be a soft drink.

2-66 (c-2) The exemption provided by Subsection (a) does not
 2-67 include the following prepared food:

2-68 (1) food, food products, and drinks, including meals,
 2-69 milk and milk products, fruit and fruit products, sandwiches,

3-1 salads, processed meats and seafoods, vegetable juice, and ice
 3-2 cream in cones or small cups, served, prepared, or sold ready for
 3-3 immediate consumption in or by restaurants, lunch counters,
 3-4 cafeterias, vending machines, hotels, or like places of business or
 3-5 sold ready for immediate consumption from pushcarts, motor
 3-6 vehicles, or any other form of vehicle;

3-7 (2) food sold in a heated state or heated by the
 3-8 seller; or

3-9 (3) two or more food ingredients mixed or combined by
 3-10 the seller for sale as a single item, including items that are sold
 3-11 in an unheated state by weight or volume as a single item, but not
 3-12 including food that is only cut, repackaged, or pasteurized by the
 3-13 seller.

3-14 (c-3) The exemption provided by Subsection (a) includes:

3-15 (1) bakery items sold without plates or other eating
 3-16 utensils, including bread, rolls, buns, biscuits, bagels,
 3-17 croissants, pastries, doughnuts, Danish, cakes, tortes, pies,
 3-18 tarts, muffins, bars, cookies, and tortillas; and

3-19 (2) eggs, fish, meat, and poultry, and foods
 3-20 containing these raw animal foods, that require cooking by the
 3-21 consumer as recommended by the Food and Drug Administration in
 3-22 Chapter 3, Section 401.11 of its Food Code to prevent food-borne
 3-23 illness and any other food that requires cooking by the consumer
 3-24 before the food is edible.

3-25 (e) Food products, candy, and soft drinks [~~carbonated~~
 3-26 ~~beverages, and diluted juices~~] are exempted from the taxes imposed
 3-27 by this chapter if sold at an exempt sale qualifying under this
 3-28 subsection or if stored or used by the purchaser of the item at the
 3-29 exempt sale. A sale is exempted under this subsection if:

3-30 (1) the sale is made by a person under 19 years old who
 3-31 is a member of a nonprofit organization devoted to the exclusive
 3-32 purpose of education or religious or physical training or by a group
 3-33 associated with a public or private elementary or secondary school;

3-34 (2) the sale is made as a part of a fund-raising drive
 3-35 sponsored by the organization or group; and

3-36 (3) all net proceeds from the sale go to the
 3-37 organization or group for its exclusive use.

3-38 (f) The exemption provided by this section does
 3-39 [~~Subsections (a), (b), and (c) of this section do~~] not apply to the
 3-40 sale of food products through the use or operation of a vending
 3-41 machine for which [~~edible products for human consumption~~] the
 3-42 receipts or sales prices are determined by [~~price for which are~~
 3-43 ~~taxed subject to~~] Section 151.007(d) [~~of this code~~].

3-44 (g) The exemption provided by Subsection (d)(3) does not
 3-45 apply to food products, meals, soft drinks, and candy [~~for human~~
 3-46 ~~consumption~~] sold to a person confined in a correctional facility
 3-47 operated under the authority or jurisdiction of or under contract
 3-48 with this state or a political subdivision of the state.

3-49 SECTION 10. Subsection (a), Section 151.317, Tax Code, is
 3-50 amended to read as follows:

3-51 (a) Subject to Subsection (d), gas and electricity are
 3-52 exempted from the taxes imposed by this chapter when sold for:

3-53 (1) residential use;

3-54 (2) use in powering equipment exempt under Section
 3-55 151.318 or 151.3185 by a person processing tangible personal
 3-56 property for sale as tangible personal property, other than
 3-57 preparation or storage of prepared food described by Section
 3-58 151.314(c-2) [~~food for immediate consumption~~];

3-59 (3) use in lighting, cooling, and heating in the
 3-60 manufacturing area during the actual manufacturing or processing of
 3-61 tangible personal property for sale as tangible personal property,
 3-62 other than preparation or storage of prepared food described by
 3-63 Section 151.314(c-2) [~~food for immediate consumption~~];

3-64 (4) use directly in exploring for, producing, or
 3-65 transporting, a material extracted from the earth;

3-66 (5) use in agriculture, including dairy or poultry
 3-67 operations and pumping for farm or ranch irrigation;

3-68 (6) use directly in electrical processes, such as
 3-69 electroplating, electrolysis, and cathodic protection;

4-1 (7) use directly in the off-wing processing, overhaul,
4-2 or repair of a jet turbine engine or its parts for a certificated or
4-3 licensed carrier of persons or property;

4-4 (8) use directly in providing, under contracts with or
4-5 on behalf of the United States government or foreign governments,
4-6 defense or national security-related electronics, classified
4-7 intelligence data processing and handling systems, or
4-8 defense-related platform modifications or upgrades;

4-9 (9) a direct or indirect use, consumption, or loss of
4-10 electricity by an electric utility engaged in the purchase of
4-11 electricity for resale; or

4-12 (10) use in timber operations, including pumping for
4-13 irrigation of timberland.

4-14 SECTION 11. Subsection (c), Section 151.317, Tax Code, as
4-15 amended by Chapters 631 and 1467, Acts of the 76th Legislature,
4-16 Regular Session, 1999, is reenacted to read as follows:

4-17 (c) In this section, "residential use" means use:

4-18 (1) in a family dwelling or in a multifamily apartment
4-19 or housing complex or building or in a part of a building occupied
4-20 as a home or residence when the use is by the owner of the dwelling,
4-21 apartment, complex, or building or part of the building occupied;
4-22 or

4-23 (2) in a dwelling, apartment, house, or building or
4-24 part of a building occupied as a home or residence when the use is by
4-25 a tenant who occupies the dwelling, apartment, house, or building
4-26 or part of a building under a contract for an express initial term
4-27 for longer than 29 consecutive days.

4-28 SECTION 12. Section 321.003, Tax Code, is amended to read as
4-29 follows:

4-30 Sec. 321.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles
4-31 A and B, Title 2, and Chapters 142 and [Chapter] 151 apply to the
4-32 taxes and to the administration and enforcement of the taxes
4-33 imposed by this chapter in the same manner that those laws apply to
4-34 state taxes, unless modified by this chapter.

4-35 SECTION 13. Section 321.203, Tax Code, is amended by
4-36 amending Subsections (b), (c), (d), (e), and (g) and adding
4-37 Subsections (g-1), (g-2), (g-3), and (l) to read as follows:

4-38 (b) If a retailer has only one place of business in this
4-39 state, all of the retailer's retail sales of tangible personal
4-40 property are consummated at that place of business except as
4-41 provided by Subsection (e).

4-42 (c) If a retailer has more than one place of business in this
4-43 state, a sale of tangible personal property [~~a taxable item~~] by the
4-44 retailer is consummated at the retailer's place of business:

4-45 (1) from which the retailer ships or delivers the
4-46 property [~~item~~], if the retailer ships or delivers the property
4-47 [~~item~~] to a point designated by the purchaser or lessee; or

4-48 (2) where the purchaser or lessee takes possession of
4-49 and removes the property [~~item~~], if the purchaser or lessee takes
4-50 possession of and removes the property [~~item~~] from a place of
4-51 business of the retailer.

4-52 (d) If neither the possession of tangible personal property
4-53 [~~a taxable item~~] is taken at nor shipment or delivery of the
4-54 property [~~item~~] is made from the retailer's place of business in
4-55 this state, the sale is consummated at:

4-56 (1) the retailer's place of business in this state
4-57 where the order is received; or

4-58 (2) if the order is not received at a place of business
4-59 of the retailer, the place of business from which the retailer's
4-60 salesman who took the order operates.

4-61 (e) A sale of tangible personal property is consummated at
4-62 the location in this state to which the property [~~a taxable item~~] is
4-63 shipped or delivered or at which possession is taken by the customer
4-64 if transfer of possession of the property [~~a taxable item~~] occurs
4-65 at, or shipment or delivery of the property [~~item~~] originates from,
4-66 a location in this state other than a place of business of the
4-67 retailer and if:

4-68 (1) the retailer is an itinerant vendor who has no
4-69 place of business;

5-1 (2) the retailer's place of business where the
 5-2 purchase order is initially received or from which the retailer's
 5-3 salesman who took the order operates is outside this state; or

5-4 (3) the purchaser places the order directly with the
 5-5 retailer's supplier and the property [item] is shipped or delivered
 5-6 directly to the purchaser by the supplier.

5-7 (g) ~~The [sale of telecommunications services is consummated~~
 5-8 ~~at the location of the telephone or other telecommunications device~~
 5-9 ~~from which the call or other transmission originates, unless the~~
 5-10 ~~point of origin cannot be determined, in which case the sale is at~~
 5-11 ~~the address to which the call is billed. However, the]~~ sale of
 5-12 mobile telecommunications services is consummated in accordance
 5-13 with ~~[the provisions of]~~ Section 151.061.

5-14 (g-1) The sale of telecommunications services sold based on
 5-15 a price that is measured by individual calls is consummated at the
 5-16 location where the call originates and terminates or the location
 5-17 where the call either originates or terminates and at which the
 5-18 service address is also located.

5-19 (g-2) Except as provided by Subsection (g-3), the sale of
 5-20 telecommunications services sold on a basis other than on a
 5-21 call-by-call basis is consummated at the location of the customer's
 5-22 place of primary use. In this subsection, "place of primary use"
 5-23 has the meaning assigned by Section 151.061(a)(2).

5-24 (g-3) A sale of post-paid calling services is consummated at
 5-25 the location of the origination point of the telecommunications
 5-26 signal as first identified by the seller's telecommunications
 5-27 system or by information received by the seller from the seller's
 5-28 service provider if the system used to transport the signal is not
 5-29 that of the seller.

5-30 (l) Except as otherwise provided by this section, the sale
 5-31 of a taxable service is consummated at the location at which the
 5-32 service is performed or otherwise delivered.

5-33 SECTION 14. Section 323.003, Tax Code, is amended to read as
 5-34 follows:

5-35 Sec. 323.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles
 5-36 A and B, Title 2, and Chapters 142 and [Chapter] 151 apply to the
 5-37 taxes and to the administration and enforcement of the taxes
 5-38 imposed by this chapter in the same manner that those laws apply to
 5-39 state taxes unless modified by this chapter.

5-40 SECTION 15. Section 323.203, Tax Code, is amended by
 5-41 amending Subsections (b), (c), (d), (e), and (g) and adding
 5-42 Subsections (g-1), (g-2), (g-3), and (l) to read as follows:

5-43 (b) If a retailer has only one place of business in this
 5-44 state, all of the retailer's retail sales of tangible personal
 5-45 property are consummated at that place of business except as
 5-46 provided by Subsection (e).

5-47 (c) If a retailer has more than one place of business in this
 5-48 state, a sale of tangible personal property [a taxable item] by the
 5-49 retailer is consummated at the retailer's place of business:

5-50 (1) from which the retailer ships or delivers the
 5-51 property [item], if the retailer ships or delivers the property
 5-52 [item] to a point designated by the purchaser or lessee; or

5-53 (2) where the purchaser or lessee takes possession of
 5-54 and removes the property [item], if the purchaser or lessee takes
 5-55 possession of and removes the property [item] from a place of
 5-56 business of the retailer.

5-57 (d) If neither the possession of tangible personal property
 5-58 [a taxable item] is taken at nor shipment or delivery of the
 5-59 property [item] is made from the retailer's place of business in
 5-60 this state, the sale is consummated at:

5-61 (1) the retailer's place of business in this state
 5-62 where the order is received; or

5-63 (2) if the order is not received at a place of business
 5-64 of the retailer, the place of business from which the retailer's
 5-65 salesman who took the order operates.

5-66 (e) A sale of tangible personal property is consummated at
 5-67 the location in this state to which the property [a taxable item] is
 5-68 shipped or delivered or at which possession is taken by the customer
 5-69 if transfer of possession of the property [a taxable item] occurs

at, or shipment or delivery of the property [~~taxable item~~] originates from, a location in this state other than a place of business of the retailer and if:

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

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

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

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

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

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

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

(l) Except as otherwise provided by this section, the sale of a taxable service is consummated at the location at which the service is performed or otherwise delivered.

SECTION 16. (a) The comptroller of public accounts shall conduct a study of the economic and other costs to political subdivisions of this state of changing the sourcing laws relating to the sale of tangible personal property to comply with the Streamlined Sales and Use Tax Agreement.

(b) The comptroller of public accounts may request from a political subdivision of this state any information the comptroller requires to complete the study, and the political subdivision shall provide the requested information as soon as possible.

(c) Not later than December 31, 2004, the comptroller shall provide to the lieutenant governor, speaker of the house of representatives, and presiding officers of the senate and house committees having primary jurisdiction over the comptroller a report on the results of the study.

SECTION 17. The following provisions of the Tax Code are repealed:

- (1) Subsection (c), Section 151.326; and
- (2) Chapter 326.

SECTION 18. (a) Except as provided by Subsection (b) of this section, this Act takes effect October 1, 2003.

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

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

* * * * *