

BILL ANALYSIS

C.S.H.B. 1342
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, an individual who sells more than two taxable items in a twelve month period is subject to the Texas sales and use tax. If personal property is sold in parts exceeding "two items" as defined in section 151.008 of the Tax Code, individuals must subsequently obtain a "retailer" permit. However, many students, seniors, or families auction off personal property over the Internet (e.g. Ebay) where listings of multiple personal items has become common practice. Existing law, unfortunately, does not sufficiently differentiate between business and personal sales, putting these non-business sellers in violation of the law.

C.S.H.B. 1342 assures that the sale of personal property, so long as items are bought for personal use or by family, is understood as an "occasional sale" under the Tax Code.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1342 expands the definition of an "occasional sale" to allow for the sale of taxable personal property by an individual if: (1) the property was originally bought by the individual or a member of the individual's family for the personal use of the individual or the individual's family; (2) the individual does not hold a permit issued under this chapter and is not required to obtain a permit as a "seller" or "retailer" as those terms are defined by Section 151.008; (3) the individual does not employ an auctioneer, broker, or factor, other than an online auction, to sell the property; and (4) the total receipts from sales of the individual's tangible personal property in a calendar year does not exceed \$3,000.

EFFECTIVE DATE

July 1, 2005, or if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes language from the original bill providing negative definitions for "seller" and "retailer." The substitute differs from the original bill by changing the "occasional sale" factor in Section 151.304(b)(3)(D) from "the sale would otherwise not be considered an occasional sale under this section" to "the total receipts from sales of the individual's tangible personal property in a calendar year does not exceed \$3,000."