

By: Hochberg

H.B. No. 1342

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of the sales and use tax on certain sales made by individuals.

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

SECTION 1. Section 151.008, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) An individual is not a "seller" or "retailer" for purposes of this section if:

(1) the individual is not engaged in the active conduct of a trade or business in this state for the purposes of affecting sales of taxable items; and

(2) the only sales made by the individual are sales of taxable personal property described by Section 151.304(b)(5).

SECTION 2. Section 151.304(b), Tax Code, is amended to read as follows:

(b) In this section, "occasional sale" means:

(1) one or two sales of taxable items, other than an amusement service, at retail during a 12-month period by a person who does not habitually engage, or hold himself out as engaging, in the business of selling taxable items at retail;

(2) the sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business;

(3) a transfer of all or substantially all the

1 property used by a person in the course of an activity if after the
2 transfer the real or ultimate ownership of the property is
3 substantially similar to that which existed before the transfer;
4 [~~or~~]

5 (4) the sale of not more than 10 admissions for
6 amusement services during a 12-month period by a person who does not
7 hold himself out as engaging, or does not habitually engage, in
8 providing amusement services; or

9 (5) the sale of taxable personal property by an
10 individual if:

11 (A) the property was originally bought by the
12 individual or a member of the individual's family for the personal
13 use of the individual or the individual's family;

14 (B) the individual does not hold a permit issued
15 under this chapter and is not required to obtain a permit as a
16 "seller" or "retailer" as those terms are defined by Section
17 151.008;

18 (C) the individual does not employ an auctioneer,
19 broker, or factor, other than an online auction, to sell the
20 property; and

21 (D) the sale would otherwise not be considered an
22 occasional sale under this section.

23 SECTION 3. The change in law made by this Act does not
24 affect tax liability accruing before the effective date of this
25 Act. That liability continues in effect as if this Act had not been
26 enacted, and the former law is continued in effect for the
27 collection of taxes due and for civil and criminal enforcement of

1 the liability for those taxes.

2 SECTION 4. This Act takes effect July 1, 2005, if it
3 receives a vote of two-thirds of all members elected to each house,
4 as provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for effect on that date,
6 this Act takes effect September 1, 2005.