

## **BILL ANALYSIS**

C.S.H.B. 3319  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Comptroller of Public Accounts has identified several issues regarding the sales tax that would clarify the law and provide guidance to make administration of the law more efficient. CSHB 3319 amends the Tax Code to make technical changes, revisions, and clarifications to provisions relating to the sales and use tax.

### **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**

The bill amends Sections 151.313(a), Tax Code, to clarify that a drug or medicine that is required to be labeled with a “Drug Facts” panel in accordance with regulations of the federal Food and Drug Administration, without regard to whether it is prescribed or dispensed by a licensed practitioner of the healing arts is on the list of items that are exempted from taxes imposed under Chapter 151, Tax Code.

Current law lacks the “required to be labeled with a ‘Drug Facts’ panel” language. Subsection (c) provides that a product is a drug or medicine for purposes of this section if the product 1.) is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, illness injury, or pain; 2.) is applied to the human body or is a product that human ingests or inhales; 3.) is not an appliance or device; and 4.) is not food. Current law uses these and adds that the definition also includes a product that is labeled or required to be labeled with a “Drug Facts” panel in accordance with regulations of the federal Food and Drug Administration.

The bill amends Section 151.3162(b), Tax Code, by eliminating the word “commonly” from the first tax exemption. The amendment reads, “The following items are exempted from the tax imposed by this chapter: 1.) seedling of trees grown for commercial timber;...”

The bill amends the Section 151.328(a)(4), Tax Code, by specifying that aircraft are exempted from the taxes imposed by Chapter 151, Tax Code, if:...4.) sold in this state to a person for use and registration in another state or nation before any use in this state other than flight training in the aircraft and the transportation of the aircraft out of this state. Current law does not expressly require that the aircraft be sold in this state.

Subsection (c) provides conforming changes to reflect changes in federal law.

The bill amends Section 321.203(b), (c), and (d), Tax Code, to substitute the phrase “taxable item” in the place of “tangible personal property.” These Subsections are also amended to change the word “property” to “item.”

Subsection (b) provides that where a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items are consummated at that place of business except as provided by Subsection (e).

Subsection (c) provides that where the retailer has more than one place of business in this state, a sale of a taxable item by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item, if it is shipped or delivered to a point designated by the purchaser or lessee; or (2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

Under Subsection (d) if neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or (2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

Subsection (e) provides that a sale of a taxable item is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item occurs at, or shipment or delivery of the 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 in this state; (2) the retailer's place of business where the purchase order is initially received or from which the retailer's agent or employee who took the order operates is outside this state; or (3) the purchaser places the order directly with the retailer's supplier and the item is shipped or delivered directly to the purchaser by the supplier.

The bill adds Section 321.203(n), Tax Code, to provide that a sale of a service described by Section 151.0047, Tax Code, to remodel, repair, or restore nonresidential real property is consummated at the location of the job site.

The bill amends Section 323.102(c), Tax Code, to provide that a tax imposed under Section 323.105 of this code (Crime Control District Tax) or Chapter 326 (Library Districts) or 383 (County Development Districts), Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b), Tax Code. Current law does not include County Development District sales taxes under Chapter 383, Local Gov't Code.

The bill amends Section 323.203, Tax Code, by substituting the phrase "taxable item" in the place of "tangible personal property." These Subsections are also amended to change the word "property" to "item."

Subsection (b) provides that where a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items are consummated at that place of business except as provided by Subsection (e).

Subsection (c) provides that where the retailer has more than one place of business in this state, a sale of a taxable item by the retailer is consummated at the retailer's place of business:

(1) from which the retailer ships or delivers the item, if it is shipped or delivered to a point designated by the purchaser or lessee; or (2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

Under Subsection (d) if neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state, the sale is consummated at:

(1) the retailer's place of business in this state where the order is received; or (2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

Subsection (e) provides that a sale of a taxable item is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item occurs at, or shipment or delivery of the 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 in this state; (2) the retailer's place of business

where the purchase order is initially received or from which the retailer's agent or employee who took the order operates is outside this state; or (3) the purchaser places the order directly with the retailer's supplier and the item is shipped or delivered directly to the purchaser by the supplier. to substitute the phrase "taxable item" in the place of "tangible personal property." These Subsections are also amended to change the word "property" to "item."

The bill also adds Section 321.203(m), Tax Code, to provide that a sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site.

The bill repeals the following sections of the Tax Code: 151.0232 (CPA Audit Program); 151.103(d) (Collection of certain local sales taxes by retailers not located within the local jurisdiction); 151.202(c) (Agreement by a permitted seller to collect any applicable local taxes even if seller not engages in business in the jurisdiction); 321.203(l); and 323.203(l) (sale of a taxable service is consummated at the location where the service is performed or otherwise delivered).

The bill provides that a change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

This Act provides an effective date of September 1, 2007.

### **EFFECTIVE DATE**

This Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The caption is broadened providing that the Act is relating the sales and use tax.

CSHB 3319 eliminates the "labeled or" language to provide that drugs or medicines that are required to be labeled with a "Drug Facts" panel in accordance with regulation of the FDA without regard to whether it is prescribed or dispensed by a licensed practitioner of the healing arts are exempted from taxes imposed by Chapter 151, Tax Code. The filed version applies the exemption to those medicines or drugs with labels and to those required to be labeled.

To clarify that the aircraft exemption applies to aircraft sold in this state, CSHB 3319 changes the language from "sold to a person in this state..." to "sold in this state to a person..." SECTION also makes conforming changes by changing "airplane flight simulator" to "airplane flight simulation device" that is approved by the FAA under Appendices A and B, 14 C.F.R. 60. The filed version did not include Appendix B.

CSHB 3319, substitutes the phrase "taxable items" in the place of "tangible personal property." These SECTIONS of the Substitute also replace the word "item" for "property." The SECTIONS substitute the words "agent or employee" for the word "salesman." Finally, these SECTIONS of the Substitute, make the location of the job site where a sale of a service occurs under Section 151.0047, Tax Code, the place where the sale is deemed to be consummated.

CSHB 3319, adds county development district sales taxes under Chapter 383, Local Gov't Code, to the list of taxes to take effect on the first complete calendar quarter after the comptroller receives notice of the tax's adoption.

In addition to repealing the Comptroller's CPA Audit Program, CSHB 3319 also repeals Section 151.103(d) (Collection of certain local sales taxes by retailers not located within the local jurisdiction); 151.202(c) (Agreement by a permitted seller to collect any applicable local taxes even if seller not engages in business in the jurisdiction); 321.203(l); and 323.203(l) (sale of a taxable service is consummated at the location where the service is performed or otherwise delivered).

