

By: Keffer

H.B. No. 3319

A BILL TO BE ENTITLED

AN ACT

relating to the sales and use tax.

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

SECTION 1. Section 151.0048, Tax Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) "Real property service" does not include a service listed under Subsection (a) if the service is performed by a landman and is necessary to negotiate or secure land or mineral rights for acquisition or trade, including:

(1) determining ownership;

(2) negotiating a trade or agreement regarding land or mineral rights;

(3) drafting and administering contractual agreements;

(4) ensuring that all governmental regulations are complied with; and

(5) any other action necessary to complete the transaction related to a service described by this subsection, other than an information service described by Section 151.0038.

SECTION 2. Section 151.006, Tax Code, is amended to read as follows:

Sec. 151.006. "SALE FOR RESALE." (a) "Sale for resale" means a sale of:

(1) tangible personal property or a taxable service to

1 a purchaser who acquires the property or service for the purpose of
2 reselling it in the United States of America or a possession or
3 territory of the United States of America or in the United Mexican
4 States in the normal course of business in the form or condition in
5 which it is acquired or as an attachment to or integral part of
6 other tangible personal property or taxable service;

7 (2) tangible personal property to a purchaser for the
8 sole purpose of the purchaser's leasing or renting it in the United
9 States of America or a possession or territory of the United States
10 of America or in the United Mexican States in the normal course of
11 business to another person, but not if incidental to the leasing or
12 renting of real estate;

13 (3) tangible personal property to a purchaser who
14 acquires the property for the purpose of transferring it in the
15 United States of America or a possession or territory of the United
16 States of America or in the United Mexican States as an integral
17 part of a taxable service; or

18 (4) a taxable service performed on tangible personal
19 property that is held for sale by the purchaser of the taxable
20 service.

21 (b) Subsection (a)(3) applies to a transfer of a wireless
22 voice communication device as an integral part of a taxable
23 service, regardless of whether there is a separate charge for the
24 wireless voice communication device or whether the purchaser is the
25 provider of the taxable service, if payment for the service is a
26 condition for receiving the wireless voice communication device.

27 SECTION 3. Sections 151.313(a) and (c), Tax Code, are

1 amended to read as follows:

2 (a) The following items are exempted from the taxes imposed
3 by this chapter:

4 (1) a drug or medicine, other than insulin, if
5 prescribed or dispensed for a human or animal by a licensed
6 practitioner of the healing arts;

7 (2) insulin;

8 (3) ~~[subject to Subsection (c),]~~ a drug or medicine
9 that is required to be labeled with a "Drug Facts" panel in
10 accordance with regulations of the federal Food and Drug
11 Administration, without regard to whether it is prescribed or
12 dispensed by a licensed practitioner of the healing arts;

13 (4) a hypodermic syringe or needle;

14 (5) a brace; hearing aid or audio loop; orthopedic,
15 dental, or prosthetic device; ileostomy, colostomy, or ileal
16 bladder appliance; or supplies or replacement parts for the listed
17 items;

18 (6) a therapeutic appliance, device, and any related
19 supplies specifically designed for those products, if dispensed or
20 prescribed by a licensed practitioner of the healing arts, when
21 those items are purchased and used by an individual for whom the
22 items listed in this subdivision were dispensed or prescribed;

23 (7) corrective lens and necessary and related
24 supplies, if dispensed or prescribed by an ophthalmologist or
25 optometrist;

26 (8) specialized printing or signalling equipment used
27 by the deaf for the purpose of enabling the deaf to communicate

1 through the use of an ordinary telephone and all materials, paper,
2 and printing ribbons used in that equipment;

3 (9) a braille wristwatch, braille writer, braille
4 paper and braille electronic equipment that connects to computer
5 equipment, and the necessary adaptive devices and adaptive computer
6 software;

7 (10) each of the following items if purchased for use
8 by the blind to enable them to function more independently: a slate
9 and stylus, print enlarger, light probe, magnifier, white cane,
10 talking clock, large print terminal, talking terminal, or harness
11 for guide dog;

12 (11) hospital beds;

13 (12) blood glucose monitoring test strips;

14 (13) an adjustable eating utensil used to facilitate
15 independent eating if purchased for use by a person, including a
16 person who is elderly or physically disabled, has had a stroke, or
17 is a burn victim, who does not have full use or control of the
18 person's hands or arms;

19 (14) subject to Subsection (d), a dietary supplement;

20 and

21 (15) intravenous systems, supplies, and replacement
22 parts used in the treatment of humans.

23 (c) A product is a drug or medicine for purposes of this
24 section if ~~+~~

25 ~~(1)~~ the product:

26 (1) ~~(A)~~ is intended for use in the diagnosis, cure,
27 mitigation, treatment, or prevention of disease, illness, injury,

1 or pain;

2 (2) [~~(B)~~] is applied to the human body or is a product
3 that a human ingests or inhales;

4 (3) [~~(C)~~] is not an appliance or device; and

5 (4) [~~(D)~~] is not food[~~, or~~

6 [~~(2) the product is labeled or required to be labeled~~
7 ~~with a "Drug Facts" panel in accordance with regulations of the~~
8 ~~federal Food and Drug Administration].~~

9 SECTION 4. Section 151.3162(b), Tax Code, is amended to
10 read as follows:

11 (b) The following items are exempted from the tax imposed by
12 this chapter:

13 (1) seedlings of trees [~~commonly~~] grown for commercial
14 timber;

15 (2) defoliants, desiccants, equipment, fertilizers,
16 fungicides, herbicides, insecticides, and machinery exclusively
17 used in the production of timber to be sold in the regular course of
18 business;

19 (3) machinery and equipment used in, and pollution
20 control equipment required as a result of, the processing, packing,
21 or marketing of timber products by an original producer if:

22 (A) the processing, packing, or marketing occurs
23 at or from a location operated by the original producer;

24 (B) at least 50 percent of the value of the timber
25 products processed, packed, or marketed at or from the location is
26 attributable to products produced by the original producer and not
27 purchased or acquired from others; and

1 (C) the original producer does not process, pack,
2 or market for consideration timber products that belong to another
3 person with a value greater than five percent of the total value of
4 the timber products processed, packed, or marketed by the producer;
5 and

6 (4) tangible personal property sold or used to be
7 installed as a component of an underground irrigation system
8 exclusively used in the production of timber to be sold in the
9 regular course of business.

10 SECTION 5. (a) Section 151.318(b), Tax Code, is amended to
11 read as follows:

12 (b) The exemption includes:

13 (1) chemicals, catalysts, and other materials that are
14 used during a manufacturing, processing, or fabrication operation
15 to produce or induce a chemical or physical change, to remove
16 impurities, or to make the product more marketable;

17 (2) semiconductor fabrication cleanrooms and
18 equipment; and

19 (3) pharmaceutical biotechnology cleanrooms and
20 equipment that are installed as part of the construction of a new
21 facility [~~with a value of at least \$150 million and~~] on which
22 construction began after July 1, 2003[~~, and before August 31,~~
23 ~~2004~~].

24 (b) Notwithstanding any other provision of this Act, this
25 section takes effect July 1, 2007, if this Act receives a vote of
26 two-thirds of all members elected to each house, as provided by
27 Section 39, Article III, Texas Constitution. If this Act does not

1 receive the vote necessary for effect on that date, this section
2 takes effect September 1, 2007.

3 SECTION 6. Section 151.326, Tax Code, is amended to read as
4 follows:

5 Sec. 151.326. CLOTHING AND FOOTWEAR FOR LIMITED
6 PERIOD. (a) The sale of an article of clothing or footwear
7 designed to be worn on or about the human body is exempted from the
8 taxes imposed by this chapter if:

9 (1) the sales price of the article is less than \$100;
10 and

11 (2) the sale takes place during a period beginning at
12 12:01 a.m. on the third [~~first~~] Friday in August and ending at 12
13 midnight on the following Sunday.

14 (b) This section does not apply to:

15 (1) any special clothing or footwear that is primarily
16 designed for athletic activity or protective use and that is not
17 normally worn except when used for the athletic activity or
18 protective use for which it is designed;

19 (2) accessories, including jewelry, handbags,
20 luggage, umbrellas, wallets, watches, and similar items carried on
21 or about the human body, without regard to whether worn on the body
22 in a manner characteristic of clothing; and

23 (3) the rental of clothing or footwear.

24 SECTION 7. Sections 151.328(a) and (c), Tax Code, are
25 amended to read as follows:

26 (a) Aircraft are exempted from the taxes imposed by this
27 chapter if:

1 (1) sold to a person using the aircraft as a
2 certificated or licensed carrier of persons or property;

3 (2) sold to a person who:

4 (A) has a sales tax permit issued under this
5 chapter; and

6 (B) uses the aircraft for the purpose of
7 providing flight instruction that is:

8 (i) recognized by the Federal Aviation
9 Administration;

10 (ii) under the direct or general
11 supervision of a flight instructor certified by the Federal
12 Aviation Administration; and

13 (iii) designed to lead to a pilot
14 certificate or rating issued by the Federal Aviation Administration
15 or otherwise required by a rule or regulation of the Federal
16 Aviation Administration;

17 (3) sold to a foreign government; or

18 (4) sold in this state to a person for use and
19 registration in another state or nation before any use in this state
20 other than flight training in the aircraft and the transportation
21 of the aircraft out of this state.

22 (c) In this section, "aircraft" does not include a rocket or
23 missile, but does include:

24 (1) a fixed wing, heavier-than-air craft that is
25 driven by propeller or jet and supported by the dynamic reaction of
26 the air against its wings;

27 (2) a helicopter; and

1 (3) an airplane flight simulation training device
2 [~~simulator~~] approved by the Federal Aviation Administration [~~for~~
3 ~~use as a Phase II or higher flight simulator~~] under Appendices A and
4 B [~~Appendix H~~], 14 C.F.R. Part 60 [~~121~~].

5 SECTION 8. Section 321.203, Tax Code, is amended by
6 amending Subsections (b), (c), (d), and (e) and adding Subsection
7 (n) to read as follows:

8 (b) If a retailer has only one place of business in this
9 state, all of the retailer's retail sales of taxable items
10 [~~tangible personal property~~] are consummated at that place of
11 business except as provided by Subsection (e).

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

15 (1) from which the retailer ships or delivers the item
16 [~~property~~], if the retailer ships or delivers the item [~~property~~]
17 to a point designated by the purchaser or lessee; or

18 (2) where the purchaser or lessee takes possession of
19 and removes the item [~~property~~], if the purchaser or lessee takes
20 possession of and removes the item [~~property~~] from a place of
21 business of the retailer.

22 (d) If neither the possession of a taxable item [~~tangible~~
23 ~~personal property~~] is taken at nor shipment or delivery of the item
24 [~~property~~] is made from the retailer's place of business in this
25 state, the sale is consummated at:

26 (1) the retailer's place of business in this state
27 where the order is received; or

1 (2) if the order is not received at a place of business
2 of the retailer, the place of business from which the retailer's
3 agent or employee [~~salesman~~] who took the order operates.

4 (e) A sale of a taxable item [~~tangible personal property~~] is
5 consummated at the location in this state to which the item
6 [~~property~~] is shipped or delivered or at which possession is taken
7 by the customer if transfer of possession of the item [~~property~~]
8 occurs at, or shipment or delivery of the item [~~property~~]
9 originates from, a location in this state other than a place of
10 business of the retailer and if:

11 (1) the retailer is an itinerant vendor who has no
12 place of business in this state;

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

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

20 (n) A sale of a service described by Section 151.0047 to
21 remodel, repair, or restore nonresidential real property is
22 consummated at the location of the job site.

23 SECTION 9. Section 323.102(c), Tax Code, is amended to read
24 as follows:

25 (c) A tax imposed under Section 323.105 of this code or
26 Chapter 326 or 383, Local Government Code, takes effect on the first
27 day of the first calendar quarter after the expiration of the first

1 complete calendar quarter occurring after the date on which the
2 comptroller receives a notice of the action as required by Section
3 323.405(b).

4 SECTION 10. Section 323.203, Tax Code, is amended by
5 amending Subsections (b), (c), (d), and (e) and adding Subsection
6 (m) to read as follows:

7 (b) If a retailer has only one place of business in this
8 state, all of the retailer's retail sales of taxable items
9 [~~tangible personal property~~] are consummated at that place of
10 business except as provided by Subsection (e).

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

14 (1) from which the retailer ships or delivers the item
15 [~~property~~], if the retailer ships or delivers the item [~~property~~]
16 to a point designated by the purchaser or lessee; or

17 (2) where the purchaser or lessee takes possession of
18 and removes the item [~~property~~], if the purchaser or lessee takes
19 possession of and removes the item [~~property~~] from a place of
20 business of the retailer.

21 (d) If neither the possession of a taxable item [~~tangible~~
22 ~~personal property~~] is taken at nor shipment or delivery of the item
23 [~~property~~] is made from the retailer's place of business in this
24 state, the sale is consummated at:

25 (1) the retailer's place of business in this state
26 where the order is received; or

27 (2) if the order is not received at a place of business

1 of the retailer, the place of business from which the retailer's
2 agent or employee [~~salesman~~] who took the order operates.

3 (e) A sale of a taxable item [~~tangible personal property~~] is
4 consummated at the location in this state to which the item
5 [~~property~~] is shipped or delivered or at which possession is taken
6 by the customer if transfer of possession of the item [~~property~~]
7 occurs at, or shipment or delivery of the item [~~property~~]
8 originates from, a location in this state other than a place of
9 business of the retailer and if:

10 (1) the retailer is an itinerant vendor who has no
11 place of business in this state;

12 (2) the retailer's place of business where the
13 purchase order is initially received or from which the retailer's
14 agent or employee [~~salesman~~] who took the order operates is outside
15 this state; or

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

19 (m) A sale of a service described by Section 151.0047 to
20 remodel, repair, or restore nonresidential real property is
21 consummated at the location of the job site.

22 SECTION 11. The following sections of the Tax Code are
23 repealed:

- 24 (1) Section 151.0232;
25 (2) Section 151.103(d);
26 (3) Section 151.202(c);
27 (4) Section 321.203(1); and

1 (5) Section 323.203(1).

2 SECTION 12. The change in law made by this Act does not
3 affect tax liability accruing before the effective date of this
4 Act. That liability continues in effect as if this Act had not been
5 enacted, and the former law is continued in effect for the
6 collection of taxes due and for civil and criminal enforcement of
7 the liability for those taxes.

8 SECTION 13. This Act takes effect September 1, 2007.