H.B. No. 3319

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

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

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

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

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

SECTION 3. Section 151.056, Tax Code, is amended by adding
Subsection (g) to read as follows:

(g) In this subsection, "ready mix concrete contractor" means a person who manufactures or produces ready mixed concrete for construction purposes and incorporates the ready mixed concrete in the property improved. A ready mix concrete contractor performing a contract must separate and individually invoice the customer for each yard of ready mixed concrete produced and consumed for the improvement of real property and collect and remit the tax imposed under this chapter on the ready mixed concrete produced and consumed. The tax rate is applied to the price of the materials determined by the greater of the invoice price or fair market value of ready mixed concrete incorporated into the project. This subsection does not apply to an invoice submitted by a ready mix concrete contractor for a public works project.

SECTION 4. Sections 151.313(a) and (c), Tax Code, are amended to read as follows:

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

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

(2) insulin;

(3) [subject to Subsection (c),] 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;
(4) a hypodermic syringe or needle;
(5) a brace; hearing aid or audio loop; orthopedic,
dental, or prosthetic device; ileostomy, colostomy, or ileal
bladder appliance; or supplies or replacement parts for the listed
items;
(6) a therapeutic appliance, device, and any related
supplies specifically designed for those products, if dispensed or
prescribed by a licensed practitioner of the healing arts, when
those items are purchased and used by an individual for whom the
items listed in this subdivision were dispensed or prescribed;
(7) corrective lens and necessary and related
supplies, if dispensed or prescribed by an ophthalmologist or
optometrist;
(8) specialized printing or signalling equipment used
by the deaf for the purpose of enabling the deaf to communicate
through the use of an ordinary telephone and all materials, paper,
and printing ribbons used in that equipment;
(9) a braille wristwatch, braille writer, braille
paper and braille electronic equipment that connects to computer
equipment, and the necessary adaptive devices and adaptive computer
software;
(10) each of the following items if purchased for use
by the blind to enable them to function more independently: a slate
and stylus, print enlarger, light probe, magnifier, white cane,
talking clock, large print terminal, talking terminal, or harness
for guide dog;
(11) hospital beds;
(12) blood glucose monitoring test strips;
(13) an adjustable eating utensil used to facilitate independent eating if purchased for use by a person, including a person who is elderly or physically disabled, has had a stroke, or is a burn victim, who does not have full use or control of the person's hands or arms;
(14) subject to Subsection (d), a dietary supplement;
and
(15) intravenous systems, supplies, and replacement parts used in the treatment of humans.

(c) A product is a drug or medicine for purposes of this section if:

(1) [(A)] is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, illness, injury, or pain;
(2) [(B)] is applied to the human body or is a product that a human ingests or inhales;
(3) [(C)] is not an appliance or device; and
(4) [(D)] is not food[.] or

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

SECTION 5. Section 151.3162(b), Tax Code, is amended to read as follows:
(b) The following items are exempted from the tax imposed by this chapter:
(1) seedlings of trees grown for commercial timber;
(2) defoliants, desiccants, equipment, fertilizers, fungicides, herbicides, insecticides, and machinery exclusively used in the production of timber to be sold in the regular course of business;
(3) machinery and equipment used in, and pollution control equipment required as a result of, the processing, packing, or marketing of timber products by an original producer if:
   (A) the processing, packing, or marketing occurs at or from a location operated by the original producer;
   (B) at least 50 percent of the value of the timber products processed, packed, or marketed at or from the location is attributable to products produced by the original producer and not purchased or acquired from others; and
   (C) the original producer does not process, pack, or market for consideration timber products that belong to another person with a value greater than five percent of the total value of the timber products processed, packed, or marketed by the producer; and
(4) tangible personal property sold or used to be installed as a component of an underground irrigation system exclusively used in the production of timber to be sold in the regular course of business.

SECTION 6. (a) Section 151.318(b), Tax Code, is amended to read as follows:
   (b) The exemption includes:
(1) chemicals, catalysts, and other materials that are used during a manufacturing, processing, or fabrication operation to produce or induce a chemical or physical change, to remove impurities, or to make the product more marketable;

(2) semiconductor fabrication cleanrooms and equipment; and

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

(b) Notwithstanding any other provision of this Act, this section takes effect July 1, 2007, if this Act receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this section takes effect September 1, 2007.

SECTION 7. Section 151.326, Tax Code, is amended to read as follows:

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

(1) the sales price of the article is less than $100;

and

(2) the sale takes place during a period beginning at 12:01 a.m. on the third [first] Friday in August and ending at 12
(b) This section does not apply to:
   (1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;
   (2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing; and
   (3) the rental of clothing or footwear.

SECTION 8. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL BACKPACKS BEFORE START OF SCHOOL. (a) The sale or storage, use, or other consumption of a school backpack is exempted from the taxes imposed by this chapter if the backpack is purchased:
   (1) for use by a student in a public or private elementary or secondary school;
   (2) during the period described by Section 151.326(a)(2); and
   (3) for a sales price of less than $100.

(b) A retailer is not required to obtain an exemption certificate stating that school backpacks are purchased for use by students in a public or private elementary or secondary school unless the backpacks are purchased in a quantity that indicates that the backpacks are not purchased for use by students in a public
or private elementary or secondary school.

SECTION 9. Sections 151.328(a) and (c), Tax Code, are amended to read as follows:

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

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

(2) sold to a person who:

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

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

(i) recognized by the Federal Aviation Administration;

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

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

(3) sold to a foreign government; or

(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.

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

1. a fixed wing, heavier-than-air craft that is driven by propeller or jet and supported by the dynamic reaction of the air against its wings;
2. a helicopter; and
3. an airplane flight simulation training device approved by the Federal Aviation Administration [for use as a Phase II or higher flight simulator] under Appendices A and B [Appendix II], 14 C.F.R. Part 60 [121].

SECTION 10. Subchapter E, Chapter 152, Tax Code, is amended by adding Section 152.090 to read as follows:

Sec. 152.090. CERTAIN HYDROGEN-POWERED MOTOR VEHICLES. (a) In this section, "hydrogen-powered motor vehicle" means a vehicle that meets the Phase II standards established by the California Air Resources Board as of September 1, 2007, for an ultra low-emission vehicle II or stricter Phase II emission standards established by that board and:

1. is hydrogen power capable and has a fuel economy rating of at least 45 miles per gallon; or
2. is fully hydrogen-powered.

(b) The taxes imposed by this chapter do not apply to the sale or use of a hydrogen-powered motor vehicle.

SECTION 11. Section 321.203, Tax Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (n) to read as follows:

(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items
(c) If a retailer has more than one place of business in this state, a sale of a taxable item [tangible personal property] by the retailer is consummated at the retailer's place of business:

1. from which the retailer ships or delivers the item [property], if the retailer ships or delivers the item [property] to a point designated by the purchaser or lessee; or
2. where the purchaser or lessee takes possession of and removes the item [property], if the purchaser or lessee takes possession of and removes the item [property] from a place of business of the retailer.

(d) If neither the possession of a taxable item [tangible personal property] is taken at nor shipment or delivery of the item [property] 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 [salesman] who took the order operates.

(e) A sale of a taxable item [tangible personal property] is consummated at the location in this state to which the item [property] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item [property] occurs at, or shipment or delivery of the item [property] 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 (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 item (property) is shipped or delivered directly to the purchaser by the supplier.

(n) 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.

SECTION 12. Section 323.102(c), Tax Code, is amended to read as follows:

(c) A tax imposed under Section 323.105 of this code or Chapter 326 or 383, 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).

SECTION 13. Section 323.203, Tax Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsection (m) to read as follows:

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

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

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

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

(d) If neither the possession of a taxable item [tangible personal property] is taken at nor shipment or delivery of the item [property] 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 [salesman] who took the order operates.

(e) A sale of a taxable item [tangible personal property] is consummated at the location in this state to which the item [property] is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item [property] occurs at, or shipment or delivery of the item [property] 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 [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 item [property] is shipped or delivered directly to the purchaser by the supplier.

(m) 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.

SECTION 14. Section 403.014(a), Government Code, is amended to read as follows:
(a) Before each regular session of the legislature, the comptroller shall report to the legislature and the governor on the effect, if it is possible to assess, of exemptions, discounts, exclusions, special valuations, special accounting treatments, special rates, and special methods of reporting relating to:
(1) sales, excise, and use tax under Chapter 151, Tax Code;
(2) franchise tax under Chapter 171, Tax Code;
(3) school district property taxes under Title 1, Tax Code;
(4) motor vehicle tax under Section 152.090; and
(5) any other tax generating more than five percent of state tax revenue in the prior fiscal year.
SECTION 15. The following sections of the Tax Code are repealed:

(1) Section 151.0232;
(2) Section 151.103(d);
(3) Section 151.202(c);
(4) Section 321.203(l); and
(5) Section 323.203(l).

SECTION 16. The 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.

SECTION 17. (a) Except as provided by Subsection (b), this Act takes effect September 1, 2007.

(b) Sections 7 and 8 of this Act take effect immediately, if the Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution.
I certify that H.B. No. 3319 was passed by the House on May 9, 2007, by the following vote: Yeas 142, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3319 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3319 on May 27, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting.
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I certify that H.B. No. 3319 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3319 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: _________________________

Date

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Governor