

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. Section 151.056, Tax Code, is amended by adding

1 Subsection (g) to read as follows:

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

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

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

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

22 (2) insulin;

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

1 (4) a hypodermic syringe or needle;

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

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

11 (7) corrective lens and necessary and related
12 supplies, if dispensed or prescribed by an ophthalmologist or
13 optometrist;

14 (8) specialized printing or signalling equipment used
15 by the deaf for the purpose of enabling the deaf to communicate
16 through the use of an ordinary telephone and all materials, paper,
17 and printing ribbons used in that equipment;

18 (9) a braille wristwatch, braille writer, braille
19 paper and braille electronic equipment that connects to computer
20 equipment, and the necessary adaptive devices and adaptive computer
21 software;

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

27 (11) hospital beds;

1 (12) blood glucose monitoring test strips;

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

7 (14) subject to Subsection (d), a dietary supplement;
8 and

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

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

13 ~~[(1)]~~ the product:

14 (1) ~~[(A)]~~ is intended for use in the diagnosis, cure,
15 mitigation, treatment, or prevention of disease, illness, injury,
16 or pain;

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

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

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

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

24 SECTION 5. Section 151.3162(b), Tax Code, is amended to
25 read as follows:

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

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

3 (2) defoliants, desiccants, equipment, fertilizers,
4 fungicides, herbicides, insecticides, and machinery exclusively
5 used in the production of timber to be sold in the regular course of
6 business;

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

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

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

16 (C) the original producer does not process, pack,
17 or market for consideration timber products that belong to another
18 person with a value greater than five percent of the total value of
19 the timber products processed, packed, or marketed by the producer;
20 and

21 (4) tangible personal property sold or used to be
22 installed as a component of an underground irrigation system
23 exclusively used in the production of timber to be sold in the
24 regular course of business.

25 SECTION 6. (a) Section 151.318(b), Tax Code, is amended to
26 read as follows:

27 (b) The exemption includes:

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

5 (2) semiconductor fabrication cleanrooms and
6 equipment; and

7 (3) pharmaceutical biotechnology cleanrooms and
8 equipment that are installed as part of the construction of a new
9 facility [~~with a value of at least \$150 million and~~] on which
10 construction began after July 1, 2003[~~, and before August 31,~~
11 ~~2004~~].

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

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

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

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

26 (2) the sale takes place during a period beginning at
27 12:01 a.m. on the third [~~first~~] Friday in August and ending at 12

1 midnight on the following Sunday.

2 (b) This section does not apply to:

3 (1) any special clothing or footwear that is primarily
4 designed for athletic activity or protective use and that is not
5 normally worn except when used for the athletic activity or
6 protective use for which it is designed;

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

11 (3) the rental of clothing or footwear.

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

14 Sec. 151.327. SCHOOL BACKPACKS BEFORE START OF SCHOOL. (a)
15 The sale or storage, use, or other consumption of a school backpack
16 is exempted from the taxes imposed by this chapter if the backpack
17 is purchased:

18 (1) for use by a student in a public or private
19 elementary or secondary school;

20 (2) during the period described by Section
21 151.326(a)(2); and

22 (3) for a sales price of less than \$100.

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

1 or private elementary or secondary school.

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

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

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

8 (2) sold to a person who:

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

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

13 (i) recognized by the Federal Aviation
14 Administration;

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

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

22 (3) sold to a foreign government; or

23 (4) sold in this state to a person for use and
24 registration in another state or nation before any use in this state
25 other than flight training in the aircraft and the transportation
26 of the aircraft out of this state.

27 (c) In this section, "aircraft" does not include a rocket or

1 missile, but does include:

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

5 (2) a helicopter; and

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

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

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

18 (1) is hydrogen power capable and has a fuel economy
19 rating of at least 45 miles per gallon; or

20 (2) is fully hydrogen-powered.

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

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

26 (b) If a retailer has only one place of business in this
27 state, all of the retailer's retail sales of taxable items

1 ~~[tangible personal property]~~ are consummated at that place of
2 business except as provided by Subsection (e).

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

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

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

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

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

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

22 (e) A sale of a taxable item ~~[tangible personal property]~~ is
23 consummated at the location in this state to which the item
24 ~~[property]~~ is shipped or delivered or at which possession is taken
25 by the customer if transfer of possession of the item ~~[property]~~
26 occurs at, or shipment or delivery of the item ~~[property]~~
27 originates from, a location in this state other than a place of

1 business of the retailer and if:

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

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

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

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

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

16 (c) A tax imposed under Section 323.105 of this code or
17 Chapter 326 or 383, Local Government Code, takes effect on the first
18 day of the first calendar quarter after the expiration of the first
19 complete calendar quarter occurring after the date on which the
20 comptroller receives a notice of the action as required by Section
21 323.405(b).

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

25 (b) If a retailer has only one place of business in this
26 state, all of the retailer's retail sales of taxable items
27 [~~tangible personal property~~] are consummated at that place of

1 business except as provided by Subsection (e).

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

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

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

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

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

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

21 (e) A sale of a taxable item [~~tangible personal property~~] is
22 consummated at the location in this state to which the item
23 [~~property~~] is shipped or delivered or at which possession is taken
24 by the customer if transfer of possession of the item [~~property~~]
25 occurs at, or shipment or delivery of the item [~~property~~]
26 originates from, a location in this state other than a place of
27 business of the retailer and if:

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

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

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

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

13 SECTION 14. Section 403.014(a), Government Code, is amended
14 to read as follows:

15 (a) Before each regular session of the legislature, the
16 comptroller shall report to the legislature and the governor on the
17 effect, if it is possible to assess, of exemptions, discounts,
18 exclusions, special valuations, special accounting treatments,
19 special rates, and special methods of reporting relating to:

20 (1) sales, excise, and use tax under Chapter 151, Tax
21 Code;

22 (2) franchise tax under Chapter 171, Tax Code;

23 (3) school district property taxes under Title 1, Tax
24 Code;

25 (4) motor vehicle tax under Section 152.090; and

26 (5) [~~4~~] any other tax generating more than five
27 percent of state tax revenue in the prior fiscal year.

1 SECTION 15. The following sections of the Tax Code are
2 repealed:

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

8 SECTION 16. The change in law made by this Act does not
9 affect tax liability accruing before the effective date of this
10 Act. That liability continues in effect as if this Act had not been
11 enacted, and the former law is continued in effect for the
12 collection of taxes due and for civil and criminal enforcement of
13 the liability for those taxes.

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

16 (b) Sections 7 and 8 of this Act take effect immediately, if
17 the Act receives a vote of two-thirds of all the members elected to
18 each house, as provided by Section 39, Article III, Texas
19 Constitution.

President of the Senate

Speaker of the House

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.

Chief Clerk of the House

H.B. No. 3319

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.

Secretary of the Senate

APPROVED: _____

Date

Governor