

By: Keffer

H.B. No. 3319

Substitute the following for H.B. No. 3319:

By: Pitts

C.S.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. 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

1 those items are purchased and used by an individual for whom the
2 items listed in this subdivision were dispensed or prescribed;

3 (7) corrective lens and necessary and related
4 supplies, if dispensed or prescribed by an ophthalmologist or
5 optometrist;

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

10 (9) a braille wristwatch, braille writer, braille
11 paper and braille electronic equipment that connects to computer
12 equipment, and the necessary adaptive devices and adaptive computer
13 software;

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

19 (11) hospital beds;

20 (12) blood glucose monitoring test strips;

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

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

27 and

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

3 (c) A product is a drug or medicine for purposes of this
4 section if[+]

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

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

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

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

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

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

16 SECTION 2. Section 151.3162(b), Tax Code, is amended to
17 read as follows:

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

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

22 (2) defoliants, desiccants, equipment, fertilizers,
23 fungicides, herbicides, insecticides, and machinery exclusively
24 used in the production of timber to be sold in the regular course of
25 business;

26 (3) machinery and equipment used in, and pollution
27 control equipment required as a result of, the processing, packing,

1 or marketing of timber products by an original producer if:

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

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

8 (C) the original producer does not process, pack,
9 or market for consideration timber products that belong to another
10 person with a value greater than five percent of the total value of
11 the timber products processed, packed, or marketed by the producer;
12 and

13 (4) tangible personal property sold or used to be
14 installed as a component of an underground irrigation system
15 exclusively used in the production of timber to be sold in the
16 regular course of business.

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

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

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

23 (2) sold to a person who:

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

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

1 (i) recognized by the Federal Aviation
2 Administration;

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

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

10 (3) sold to a foreign government; or

11 (4) sold in this state to a person for use and
12 registration in another state or nation before any use in this state
13 other than flight training in the aircraft and the transportation
14 of the aircraft out of this state.

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

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

20 (2) a helicopter; and

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

25 SECTION 4. Section 321.203, Tax Code, is amended by
26 amending Subsections (b), (c), (d), and (e) and adding Subsection
27 (n) to read as follows:

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

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

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

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

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

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

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

24 (e) A sale of a taxable item [~~tangible personal property~~] is
25 consummated at the location in this state to which the item
26 [~~property~~] is shipped or delivered or at which possession is taken
27 by the customer if transfer of possession of the item [~~property~~]

1 occurs at, or shipment or delivery of the item [~~property~~]
2 originates from, a location in this state other than a place of
3 business of the retailer and if:

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

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

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

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

16 SECTION 5. Section 323.102(c), Tax Code, is amended to read
17 as follows:

18 (c) A tax imposed under Section 323.105 of this code or
19 Chapter 326 or 383, Local Government Code, takes effect on the first
20 day of the first calendar quarter after the expiration of the first
21 complete calendar quarter occurring after the date on which the
22 comptroller receives a notice of the action as required by Section
23 323.405(b).

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

27 (b) If a retailer has only one place of business in this

1 state, all of the retailer's retail sales of taxable items
2 [~~tangible personal property~~] are consummated at that place of
3 business except as provided by Subsection (e).

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

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

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

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

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

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

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

1 originates from, a location in this state other than a place of
2 business of the retailer and if:

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

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

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

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

15 SECTION 7. The following sections of the Tax Code are
16 repealed:

- 17 (1) Section 151.0232;
- 18 (2) Section 151.103(d);
- 19 (3) Section 151.202(c);
- 20 (4) Section 321.203(1); and
- 21 (5) Section 323.203(1).

22 SECTION 8. The change in law made by this Act does not
23 affect tax liability accruing before the effective date of this
24 Act. That liability continues in effect as if this Act had not been
25 enacted, and the former law is continued in effect for the
26 collection of taxes due and for civil and criminal enforcement of
27 the liability for those taxes.

1 SECTION 9. This Act takes effect September 1, 2007.