

1-1 By: Keffer (Senate Sponsor - Duncan) H.B. No. 3319
1-2 (In the Senate - Received from the House May 10, 2007;
1-3 May 14, 2007, read first time and referred to Committee on Finance;
1-4 May 19, 2007, reported favorably by the following vote: Yeas 11,
1-5 Nays 0; May 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the sales and use tax.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 151.0048, Tax Code, is amended by adding
1-11 Subsection (b-1) to read as follows:

1-12 (b-1) "Real property service" does not include a service
1-13 listed under Subsection (a) if the service is performed by a landman
1-14 and is necessary to negotiate or secure land or mineral rights for
1-15 acquisition or trade, including:

1-16 (1) determining ownership;

1-17 (2) negotiating a trade or agreement regarding land or
1-18 mineral rights;

1-19 (3) drafting and administering contractual
1-20 agreements;

1-21 (4) ensuring that all governmental regulations are
1-22 complied with; and

1-23 (5) any other action necessary to complete the
1-24 transaction related to a service described by this subsection,
1-25 other than an information service described by Section 151.0038.

1-26 SECTION 2. Section 151.006, Tax Code, is amended to read as
1-27 follows:

1-28 Sec. 151.006. "SALE FOR RESALE." (a) "Sale for resale"
1-29 means a sale of:

1-30 (1) tangible personal property or a taxable service to
1-31 a purchaser who acquires the property or service for the purpose of
1-32 reselling it in the United States of America or a possession or
1-33 territory of the United States of America or in the United Mexican
1-34 States in the normal course of business in the form or condition in
1-35 which it is acquired or as an attachment to or integral part of
1-36 other tangible personal property or taxable service;

1-37 (2) tangible personal property to a purchaser for the
1-38 sole purpose of the purchaser's leasing or renting it in the United
1-39 States of America or a possession or territory of the United States
1-40 of America or in the United Mexican States in the normal course of
1-41 business to another person, but not if incidental to the leasing or
1-42 renting of real estate;

1-43 (3) tangible personal property to a purchaser who
1-44 acquires the property for the purpose of transferring it in the
1-45 United States of America or a possession or territory of the United
1-46 States of America or in the United Mexican States as an integral
1-47 part of a taxable service; or

1-48 (4) a taxable service performed on tangible personal
1-49 property that is held for sale by the purchaser of the taxable
1-50 service.

1-51 (b) Subsection (a)(3) applies to a transfer of a wireless
1-52 voice communication device as an integral part of a taxable
1-53 service, regardless of whether there is a separate charge for the
1-54 wireless voice communication device or whether the purchaser is the
1-55 provider of the taxable service, if payment for the service is a
1-56 condition for receiving the wireless voice communication device.

1-57 SECTION 3. Sections 151.313(a) and (c), Tax Code, are
1-58 amended to read as follows:

1-59 (a) The following items are exempted from the taxes imposed
1-60 by this chapter:

1-61 (1) a drug or medicine, other than insulin, if
1-62 prescribed or dispensed for a human or animal by a licensed
1-63 practitioner of the healing arts;

1-64 (2) insulin;

2-1 (3) [~~subject to Subsection (c),~~] a drug or medicine
 2-2 that is required to be labeled with a "Drug Facts" panel in
 2-3 accordance with regulations of the federal Food and Drug
 2-4 Administration, without regard to whether it is prescribed or
 2-5 dispensed by a licensed practitioner of the healing arts;

2-6 (4) a hypodermic syringe or needle;

2-7 (5) a brace; hearing aid or audio loop; orthopedic,
 2-8 dental, or prosthetic device; ileostomy, colostomy, or ileal
 2-9 bladder appliance; or supplies or replacement parts for the listed
 2-10 items;

2-11 (6) a therapeutic appliance, device, and any related
 2-12 supplies specifically designed for those products, if dispensed or
 2-13 prescribed by a licensed practitioner of the healing arts, when
 2-14 those items are purchased and used by an individual for whom the
 2-15 items listed in this subdivision were dispensed or prescribed;

2-16 (7) corrective lens and necessary and related
 2-17 supplies, if dispensed or prescribed by an ophthalmologist or
 2-18 optometrist;

2-19 (8) specialized printing or signalling equipment used
 2-20 by the deaf for the purpose of enabling the deaf to communicate
 2-21 through the use of an ordinary telephone and all materials, paper,
 2-22 and printing ribbons used in that equipment;

2-23 (9) a braille wristwatch, braille writer, braille
 2-24 paper and braille electronic equipment that connects to computer
 2-25 equipment, and the necessary adaptive devices and adaptive computer
 2-26 software;

2-27 (10) each of the following items if purchased for use
 2-28 by the blind to enable them to function more independently: a slate
 2-29 and stylus, print enlarger, light probe, magnifier, white cane,
 2-30 talking clock, large print terminal, talking terminal, or harness
 2-31 for guide dog;

2-32 (11) hospital beds;

2-33 (12) blood glucose monitoring test strips;

2-34 (13) an adjustable eating utensil used to facilitate
 2-35 independent eating if purchased for use by a person, including a
 2-36 person who is elderly or physically disabled, has had a stroke, or
 2-37 is a burn victim, who does not have full use or control of the
 2-38 person's hands or arms;

2-39 (14) subject to Subsection (d), a dietary supplement;
 2-40 and

2-41 (15) intravenous systems, supplies, and replacement
 2-42 parts used in the treatment of humans.

2-43 (c) A product is a drug or medicine for purposes of this
 2-44 section if [+

2-45 [~~(1)~~] the product:

2-46 (1) [~~(A)~~] is intended for use in the diagnosis, cure,
 2-47 mitigation, treatment, or prevention of disease, illness, injury,
 2-48 or pain;

2-49 (2) [~~(B)~~] is applied to the human body or is a product
 2-50 that a human ingests or inhales;

2-51 (3) [~~(C)~~] is not an appliance or device; and

2-52 (4) [~~(D)~~] is not food[~~, or~~

2-53 [~~(2) the product is labeled or required to be labeled~~
 2-54 ~~with a "Drug Facts" panel in accordance with regulations of the~~
 2-55 ~~federal Food and Drug Administration].~~

2-56 SECTION 4. Section 151.3162(b), Tax Code, is amended to
 2-57 read as follows:

2-58 (b) The following items are exempted from the tax imposed by
 2-59 this chapter:

2-60 (1) seedlings of trees [~~commonly~~] grown for commercial
 2-61 timber;

2-62 (2) defoliants, desiccants, equipment, fertilizers,
 2-63 fungicides, herbicides, insecticides, and machinery exclusively
 2-64 used in the production of timber to be sold in the regular course of
 2-65 business;

2-66 (3) machinery and equipment used in, and pollution
 2-67 control equipment required as a result of, the processing, packing,
 2-68 or marketing of timber products by an original producer if:

2-69 (A) the processing, packing, or marketing occurs

3-1 at or from a location operated by the original producer;
 3-2 (B) at least 50 percent of the value of the timber
 3-3 products processed, packed, or marketed at or from the location is
 3-4 attributable to products produced by the original producer and not
 3-5 purchased or acquired from others; and

3-6 (C) the original producer does not process, pack,
 3-7 or market for consideration timber products that belong to another
 3-8 person with a value greater than five percent of the total value of
 3-9 the timber products processed, packed, or marketed by the producer;
 3-10 and

3-11 (4) tangible personal property sold or used to be
 3-12 installed as a component of an underground irrigation system
 3-13 exclusively used in the production of timber to be sold in the
 3-14 regular course of business.

3-15 SECTION 5. (a) Section 151.318(b), Tax Code, is amended to
 3-16 read as follows:

3-17 (b) The exemption includes:

3-18 (1) chemicals, catalysts, and other materials that are
 3-19 used during a manufacturing, processing, or fabrication operation
 3-20 to produce or induce a chemical or physical change, to remove
 3-21 impurities, or to make the product more marketable;

3-22 (2) semiconductor fabrication cleanrooms and
 3-23 equipment; and

3-24 (3) pharmaceutical biotechnology cleanrooms and
 3-25 equipment that are installed as part of the construction of a new
 3-26 facility [~~with a value of at least \$150 million and~~ on which
 3-27 construction began after July 1, 2003[~~, and before August 31,~~
 3-28 ~~2004~~].

3-29 (b) Notwithstanding any other provision of this Act, this
 3-30 section takes effect July 1, 2007, if this Act receives a vote of
 3-31 two-thirds of all members elected to each house, as provided by
 3-32 Section 39, Article III, Texas Constitution. If this Act does not
 3-33 receive the vote necessary for effect on that date, this section
 3-34 takes effect September 1, 2007.

3-35 SECTION 6. Section 151.326, Tax Code, is amended to read as
 3-36 follows:

3-37 Sec. 151.326. CLOTHING AND FOOTWEAR FOR LIMITED
 3-38 PERIOD. (a) The sale of an article of clothing or footwear
 3-39 designed to be worn on or about the human body is exempted from the
 3-40 taxes imposed by this chapter if:

3-41 (1) the sales price of the article is less than \$100;
 3-42 and

3-43 (2) the sale takes place during a period beginning at
 3-44 12:01 a.m. on the third [~~first~~] Friday in August and ending at 12
 3-45 midnight on the following Sunday.

3-46 (b) This section does not apply to:

3-47 (1) any special clothing or footwear that is primarily
 3-48 designed for athletic activity or protective use and that is not
 3-49 normally worn except when used for the athletic activity or
 3-50 protective use for which it is designed;

3-51 (2) accessories, including jewelry, handbags,
 3-52 luggage, umbrellas, wallets, watches, and similar items carried on
 3-53 or about the human body, without regard to whether worn on the body
 3-54 in a manner characteristic of clothing; and

3-55 (3) the rental of clothing or footwear.

3-56 SECTION 7. Sections 151.328(a) and (c), Tax Code, are
 3-57 amended to read as follows:

3-58 (a) Aircraft are exempted from the taxes imposed by this
 3-59 chapter if:

3-60 (1) sold to a person using the aircraft as a
 3-61 certificated or licensed carrier of persons or property;

3-62 (2) sold to a person who:
 3-63 (A) has a sales tax permit issued under this
 3-64 chapter; and

3-65 (B) uses the aircraft for the purpose of
 3-66 providing flight instruction that is:

3-67 (i) recognized by the Federal Aviation
 3-68 Administration;

3-69 (ii) under the direct or general

4-1 supervision of a flight instructor certified by the Federal
4-2 Aviation Administration; and

4-3 (iii) designed to lead to a pilot
4-4 certificate or rating issued by the Federal Aviation Administration
4-5 or otherwise required by a rule or regulation of the Federal
4-6 Aviation Administration;

4-7 (3) sold to a foreign government; or

4-8 (4) sold in this state to a person for use and
4-9 registration in another state or nation before any use in this state
4-10 other than flight training in the aircraft and the transportation
4-11 of the aircraft out of this state.

4-12 (c) In this section, "aircraft" does not include a rocket or
4-13 missile, but does include:

4-14 (1) a fixed wing, heavier-than-air craft that is
4-15 driven by propeller or jet and supported by the dynamic reaction of
4-16 the air against its wings;

4-17 (2) a helicopter; and

4-18 (3) an airplane flight simulation training device
4-19 [~~simulator~~] approved by the Federal Aviation Administration [~~for~~
4-20 ~~use as a Phase II or higher flight simulator~~] under Appendices A and
4-21 B [Appendix H], 14 C.F.R. Part 60 [121].

4-22 SECTION 8. Section 321.203, Tax Code, is amended by
4-23 amending Subsections (b), (c), (d), and (e) and adding Subsection
4-24 (n) to read as follows:

4-25 (b) If a retailer has only one place of business in this
4-26 state, all of the retailer's retail sales of taxable items
4-27 [~~tangible personal property~~] are consummated at that place of
4-28 business except as provided by Subsection (e).

4-29 (c) If a retailer has more than one place of business in this
4-30 state, a sale of a taxable item [~~tangible personal property~~] by the
4-31 retailer is consummated at the retailer's place of business:

4-32 (1) from which the retailer ships or delivers the item
4-33 [~~property~~], if the retailer ships or delivers the item [~~property~~]
4-34 to a point designated by the purchaser or lessee; or

4-35 (2) where the purchaser or lessee takes possession of
4-36 and removes the item [~~property~~], if the purchaser or lessee takes
4-37 possession of and removes the item [~~property~~] from a place of
4-38 business of the retailer.

4-39 (d) If neither the possession of a taxable item [~~tangible~~
4-40 ~~personal property~~] is taken at nor shipment or delivery of the item
4-41 [~~property~~] is made from the retailer's place of business in this
4-42 state, the sale is consummated at:

4-43 (1) the retailer's place of business in this state
4-44 where the order is received; or

4-45 (2) if the order is not received at a place of business
4-46 of the retailer, the place of business from which the retailer's
4-47 agent or employee [~~salesman~~] who took the order operates.

4-48 (e) A sale of a taxable item [~~tangible personal property~~] is
4-49 consummated at the location in this state to which the item
4-50 [~~property~~] is shipped or delivered or at which possession is taken
4-51 by the customer if transfer of possession of the item [~~property~~]
4-52 occurs at, or shipment or delivery of the item [~~property~~]
4-53 originates from, a location in this state other than a place of
4-54 business of the retailer and if:

4-55 (1) the retailer is an itinerant vendor who has no
4-56 place of business in this state;

4-57 (2) the retailer's place of business where the
4-58 purchase order is initially received or from which the retailer's
4-59 agent or employee [~~salesman~~] who took the order operates is outside
4-60 this state; or

4-61 (3) the purchaser places the order directly with the
4-62 retailer's supplier and the item [~~property~~] is shipped or delivered
4-63 directly to the purchaser by the supplier.

4-64 (n) A sale of a service described by Section 151.0047 to
4-65 remodel, repair, or restore nonresidential real property is
4-66 consummated at the location of the job site.

4-67 SECTION 9. Section 323.102(c), Tax Code, is amended to read
4-68 as follows:

4-69 (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 10. 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 11. 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(1); and
- (5) Section 323.203(1).

SECTION 12. 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 13. This Act takes effect September 1, 2007.

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