

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

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.

ADOPTED

MAY 23 2007

*Lataj S. ...*  
Secretary of the Senate  
*Andrew ...*

FLOOR AMENDMENT NO. 1

BY: \_\_\_\_\_

1 Amend H.B. 3319 (senate committee printing) on page 1, between  
2 lines 56 and 57, by adding the following appropriately numbered  
3 section and renumbering the remaining sections accordingly:

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

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

14

ADOPTED

FLOOR AMENDMENT NO. 2

MAY 23 2007 BY: Ellis

*Leta Spaw*  
Secretary of the Senate

1 Amend H.B. No. 3319, is amended as follows:

2 In Section 6, page 3, between 3-55 and 3-56, add the  
3 following new paragraph to Section 151.326, Tax Code, as  
4 follows:

5 (c) The sale of a school backpack made for a sales price  
6 less than \$100 during the period described in this Section is  
7 exempted from the taxes imposed by this chapter if the backpack  
8 is purchased for use by a student in a public or private  
9 elementary or secondary school. A retailer is not required to  
10 obtain an exemption certificate stating that school backpacks  
11 are purchased for use by students in a public of private  
12 elementary or secondary school unless the backpacks are  
13 purchased in a quantity that indicates that the backpacks are  
14 not purchased for use by students in a public or private  
15 elementary or secondary school.

ADOPTED

FLOOR AMENDMENT NO. 3

MAY 23 2007

BY: Ellis

*Letty Saw*  
Secretary of the Senate

1 Amend H.B. No. 3319, Section 13, page 5, line 5-64 as  
2 follows:

3 SECTION 13. This Act takes effect September 1, 2007-,  
4 except that Section 6 of this Act takes effect immediately if  
5 the Act receives a vote of two-thirds of all the members elected  
6 to each house, as provided by Section 39, Article III, Texas  
7 Constitution, and, if not, Section 6 takes effect on September  
8 1, 2007.



ADOPTED

FLOOR AMENDMENT NO. 5

MAY 23 2007 BY:

*VanderPoo*

*Lotay Drew*  
Secretary of the Senate

1 Amend HB 3319 by adding the following additional SECTIONS in the  
2 appropriate place and renumber subsequent SECTIONS

3 SECTION \_\_\_\_\_. Subchapter E, Chapter 152, Tax Code, is  
4 amended by adding Section 152.090 and 152.091 to read as  
5 follows:

6 Sec. 152.090. CERTAIN HYDROGEN-POWERED MOTOR VEHICLES.

7 (a) In this section, "hydrogen-powered motor vehicle" means a  
8 vehicle that meets the Phase II standards established by the  
9 California Air Resources Board as of September 1, 2007, for an  
10 ultra low-emission vehicle II or stricter Phase II emission  
11 standards established by that board and:

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

14 (2) is fully hydrogen-powered.

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

17 SECTION \_\_\_\_\_. Section 403.014 Government Code is amended  
18 to read as follows:

19 403.014. REPORT ON EFFECT OF CERTAIN TAX PROVISIONS. (a)  
20 Before each regular session of the legislature, the comptroller  
21 shall report to the legislature and the governor on the effect,  
22 if it is possible to assess, of exemptions, discounts,  
23 exclusions, special valuations, special accounting treatments,  
24 special rates, and special methods of reporting relating to:

25 (1) sales, excise, and use tax under Chapter 151,  
26 Tax Code; and Section 152.090 Tax Code

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

28 (3) school district property taxes under Title 1,  
29 Tax Code; and

17

1 (4) any other tax generating more than five percent  
2 of state tax revenue in the prior fiscal year.

3  
4 SECTION \_\_\_\_\_. SECTION \_\_\_\_\_ and SECTION \_\_\_\_\_ take effect  
5 September 1, 2007

6

7

# ADOPTED

MAY 23 2007

FLOOR AMENDMENT NO. 6

*Leta Spaw*  
Secretary of the Senate

*Elbert*

1 Amend H.B. No. 3319 (senate committee printing) by adding the  
2 following SECTION to the bill, appropriately numbered, and  
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_ (a) Subtitle C, Title 3, Tax Code, is amended  
5 by adding Chapter 326 to read as follows:

6 CHAPTER 326. MUNICIPAL AND COUNTY SALES AND USE TAX FOR PROPERTY  
7 TAX RELIEF

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 326.001. APPLICABLE LAW. Except as otherwise provided  
10 by this chapter:

11 (1) Chapter 321 applies to the municipal tax  
12 authorized by this chapter in the same manner as that chapter  
13 applies to the tax authorized by that chapter; and

14 (2) Chapter 323 applies to the county tax authorized  
15 by this chapter in the same manner as that chapter applies to the  
16 tax authorized by that chapter.

17 Sec. 326.002. EFFECT ON COMBINED LOCAL TAX RATE.

18 (a) Sections 321.101 and 323.101 do not apply to the municipal or  
19 county tax authorized by this chapter.

20 (b) The rate of a municipal or county sales and use tax  
21 imposed under this chapter may not be considered in determining the  
22 combined or overlapping rate of local sales and use taxes in any  
23 area under this subtitle or another law, including:

24 (1) the Health and Safety Code;

25 (2) the Local Government Code;

26 (3) the Special District Local Laws Code;

27 (4) the Transportation Code; or

28 (5) the Development Corporation Act of 1979 (Article  
29 5190.6, Vernon's Texas Civil Statutes).

1 [Sections 326.003-326.050 reserved for expansion]

2 SUBCHAPTER B. IMPOSITION OF TAX

3 Sec. 326.051. TAX AUTHORIZED. (a) A municipality or a  
4 county may adopt or abolish the sales and use tax authorized by this  
5 chapter at an election held in the municipality or county.

6 (b) The adoption of the tax authorized by this chapter by  
7 one political subdivision does not affect the authority of another  
8 political subdivision that has overlapping boundaries to also adopt  
9 the tax authorized by this chapter.

10 Sec. 326.052. TAX RATE. The rate of the tax authorized by  
11 this chapter is one-fourth of one percent.

12 Sec. 326.053. SALES AND USE TAX EFFECTIVE DATE. (a) The  
13 adoption or abolition of the tax takes effect on the first day of  
14 the first calendar quarter occurring after the expiration of the  
15 first complete calendar quarter occurring after the date on which  
16 the comptroller receives a notice of the results of the election  
17 from the municipality or county.

18 (b) If the comptroller determines that an effective date  
19 provided by Subsection (a) will occur before the comptroller can  
20 reasonably take the action required to begin collecting the tax or  
21 to implement the abolition of the tax, the effective date may be  
22 extended by the comptroller until the first day of the next  
23 succeeding calendar quarter.

24 [Sections 326.054-326.100 reserved for expansion]

25 SUBCHAPTER C. TAX ELECTION PROCEDURES

26 Sec. 326.101. CALLING ELECTION. (a) An election  
27 authorized by this chapter in a municipality is called by the  
28 adoption of an ordinance by the governing body of the municipality.

29 (b) An election authorized by this chapter in a county is  
30 called by the adoption of an order by the commissioners court of the  
31 county.

1           (c) The governing body of a municipality or the  
2 commissioners court may call an election on its own motion or shall  
3 call an election if a number of qualified voters of the municipality  
4 or county equal to at least five percent of the number of registered  
5 voters in the municipality or county petition the governing body or  
6 commissioners court to call the election.

7           Sec. 326.102. ELECTION DATE. An election under this  
8 chapter must be held on the next uniform election date that occurs  
9 after the date of the election order and that allows sufficient time  
10 to comply with the requirements of other law.

11           Sec. 326.103. BALLOT. (a) At an election to adopt the tax,  
12 the ballot shall be prepared to permit voting for or against the  
13 proposition: "The adoption of a local sales and use tax in (name of  
14 municipality or county) at the rate of one-fourth of one percent to  
15 reduce the (municipal or county) property tax rate."

16           (b) At an election to abolish the tax, the ballot shall be  
17 prepared to permit voting for or against the proposition: "The  
18 abolition of the one-fourth of one percent sales and use tax in  
19 (name of municipality or county) used to reduce the (municipal or  
20 county) property tax rate."

21           [Sections 326.104-326.150 reserved for expansion]

22                   SUBCHAPTER D. USE OF TAX REVENUE

23           Sec. 326.151. USE OF REVENUE. Any amount derived by a  
24 municipality or county from the sales and use tax under this chapter  
25 is additional sales and use tax revenue for purposes of Section  
26 26.041.

27           Sec. 326.152. CALCULATION OF MUNICIPAL OR COUNTY ROLLBACK  
28 TAX RATE. For a municipality or county in which the voters have  
29 approved the imposition of the sales and use tax under this chapter,  
30 for an ad valorem tax year that begins on or after the date the sales  
31 and use tax takes effect, in the formula for calculating the

1 rollback tax rate of the municipality or county, the officer or  
2 employee designated by the governing body of the municipality or  
3 the commissioners court of the county to make the calculation shall  
4 substitute 1.05 for 1.08.

5 (b) Subdivision (1), Section 26.012, Tax Code, is amended to  
6 read as follows:

7 (1) "Additional sales and use tax" means an additional  
8 sales and use tax imposed by:

9 (A) a municipality [~~city~~] under Section  
10 321.101(b) or Chapter 326;

11 (B) a county under Chapter 323 or 326; or

12 (C) a hospital district, other than a hospital  
13 district created on or after September 1, 2001, that:

14 (i) imposes the sales and use tax under  
15 Subchapter I, Chapter 286, Health and Safety Code; or

16 (ii) imposes the sales and use tax under  
17 Subchapter L, Chapter 285, Health and Safety Code.

18 (c) Subsection (i), Section 31.01, Tax Code, is amended to  
19 read as follows:

20 (i) For a municipality [~~city or town~~] that imposes an  
21 additional sales and use tax under Section 321.101(b) or Chapter  
22 326 [~~of this code~~], or a county that imposes a sales and use tax  
23 under Chapter 323 or 326 [~~of this code~~], the tax bill shall indicate  
24 the amount of additional ad valorem taxes, if any, that would have  
25 been imposed on the property if additional ad valorem taxes had been  
26 imposed in an amount equal to the amount of revenue estimated to be  
27 collected from the additional municipal [~~city~~] sales and use tax or  
28 from the county sales and use tax, as applicable, for the year  
29 determined as provided by Section 26.041 [~~of this code~~].

30 (d) Subsections (b) and (c) of this section apply only to ad  
31 valorem taxes that are imposed for an ad valorem tax year that

22

1 begins on or after January 1, 2008.

2 (e) Notwithstanding any other law, a county that has a  
3 population of more than 280,000 and less than 300,000, or a  
4 municipality located wholly or partly in such a county, may not hold  
5 an election to adopt a tax under Chapter 326, Tax Code, as added by  
6 Subsection (a) of this section, before January 1, 2008.

7 (f)(1) Except as provided by Subdivision (2) of this  
8 subsection, this section takes effect September 1, 2007.

9 (2) Subsections (b) and (c) of this section take  
10 effect January 1, 2008.

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**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 15, 2007**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB3319** by Keffer, Jim (Relating to the sales and use tax.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3319, As Engrossed: a negative impact of (\$17,473,000) through the biennium ending August 31, 2009.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$8,177,000)
2009	(\$9,296,000)
2010	(\$9,660,000)
2011	(\$10,047,000)
2012	(\$10,478,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND</i> 1	Probable Revenue Gain/(Loss) from <i>Cities</i>	Probable Revenue Gain/(Loss) from <i>Counties</i>	Probable Revenue Gain/(Loss) from <i>Transit Authorities</i>
2008	(\$8,177,000)	(\$1,427,000)	(\$184,000)	(\$490,000)
2009	(\$9,296,000)	(\$1,785,000)	(\$230,000)	(\$612,000)
2010	(\$9,660,000)	(\$1,854,000)	(\$240,000)	(\$636,000)
2011	(\$10,047,000)	(\$1,930,000)	(\$249,000)	(\$662,000)
2012	(\$10,478,000)	(\$2,012,000)	(\$259,000)	(\$691,000)

**Fiscal Analysis**

The bill would amend Chapters 151, 321, and 323 of the Tax Code, relating to sales and use taxes.

The bill would amend Chapter 151 to exclude services performed by a landman from the definition of "real property service" under the sales tax if the service is necessary to negotiate or secure land or mineral rights for acquisition or trade.

The bill would amend Chapter 151 to specify that the definition of "sale for resale" under the sales tax applies to the 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 device or whether the purchaser is the provider of the taxable service, if payment for the service is a condition for receiving the device.

The bill would amend Chapter 151 to remove limitations from the sales tax exemption for pharmaceutical biotechnology cleanrooms, relating to value and time period of construction.



The bill would move the start of the sales tax holiday on clothing and footwear from the first Friday in August to the third Friday in August.

The bill would amend Chapter 151 to make technical changes and clarifications to provisions relating to sales tax exemptions for drugs or medicines, seedlings for trees grown for commercial timber, and aircraft.

The bill would amend Chapters 321 and 323 to standardize the sourcing provisions for all taxable items as they relate to the collection of local sales and use taxes. Currently, local sales taxes on tangible personal property are imposed using origin-based sourcing rules; and local sales taxes on taxable services are imposed using destination-based sourcing rules.

The bill would specify that, for the purpose of imposing local sales and use taxes, the sale of nonresidential real property repair and remodeling services is consummated at the location of the job site.

The bill would specify that a sales and use tax imposed for county development districts under Chapter 383 of the Local Government Code would take 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 notice the tax has been approved.

Tax Code Section 151.0232, relating to the Comptroller's CPA Audit Program, Sections 151.103(d) and 151.202(c), relating to a seller's responsibility for the collection of local use taxes under destination-based sourcing rules, and Sections 321.203(l) and 323.203(l), relating to destination-based sourcing rules for taxable services, would be repealed.

The bill would take effect September 1, 2007.

### **Methodology**

This fiscal note is based upon analyses provided by the Comptroller's Office.

The bill would clarify certain issues regarding the administration of sales tax exemptions. Additionally, as part of an effort to comply with the Streamlined Sales Tax Project (SSTP), HB 2425, 78th Regular Legislative Session (2003) changed the local sales tax sourcing provisions for taxable services from origin-based rules to destination-based rules. The bill would restore statutes in effect before the passage of HB 2425.

The bill would create sales tax exemptions for "real property services" performed by a landman and for property installed in and associated with pharmaceutical biotechnology cleanrooms. The bill would also allow certain wireless voice communication devices to be sold for resale.

The fiscal impact of these provisions was estimated based on data gathered from various industry sources, Comptroller tax files, and the U.S. Census Bureau. The fiscal implications were adjusted for the effective date and extrapolated through 2012.

The fiscal impacts on units of local government were estimated proportionally.

### **Local Government Impact**

The revenue impact upon the respective units of local government are shown in the above tables.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, CT, SD



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 2, 2007**

**TO:** Honorable Jim Keffer, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3319** by Keffer, Jim (Relating to the sales and use tax. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Tax Code relating to the sales and use tax.

The bill would amend Chapter 151 of the Tax Code to make technical changes and clarifications to provisions relating to sales tax exemptions for drugs or medicines, seedlings for trees grown for commercial timber, and aircraft. According to the Comptroller of Public Accounts, the bill would clarify technical issues regarding the administration of certain sales tax exemptions and would have no fiscal impact.

The bill would amend the Chapters 321 and 323 of the Tax Code to standardize the sourcing provisions for all taxable items as they relate to the collection of local sales and use taxes. Currently, local sales taxes on tangible personal property are imposed using origin-based sourcing rules; and local sales taxes on taxable services are imposed using destination-based sourcing rules. According to the Comptroller, the bill would restore statutes in effect before the passage of HB 2425, 78th Regular Legislative Session (2003) that changed the local sales tax sourcing provisions for taxable services from origin-based rules to destination-based rules as part of an effort to comply with the Streamlined Sales Tax Project (SSTP). The bill would also repeal Tax Code Sections 151.103(d) and 151.202(c), relating to a seller's responsibility for the collection of local use taxes under destination-based sourcing rules, and Sections 321.203(1) and 323.203(1), relating to destination-based sourcing rules for taxable services. Furthermore, the bill would specify that for the purpose of imposing local sales and use taxes, the sale of nonresidential real property repair and remodeling services are consummated at the location of the job site.

The bill would specify that a sales and use tax imposed for county development districts under Chapter 386 of the Local Government Code would take 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 notice the tax has been approved.

The bill would also repeal Section 151.0232 of the Tax Code, relating to the Comptroller's CPA Audit Program.

The bill would take effect immediately upon enactment if it receives two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

**Local Government Impact**

According to the Comptroller of Public Accounts, the fiscal impact on units of local government cannot be determined.

**Source Agencies:** 304 Comptroller of Public Accounts



**LBB Staff:** JOB, CT, SD, EB

4





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

April 11, 2007

**TO:** Honorable Jim Keffer, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3319** by Keffer, Jim (Relating to updating and clarifying the state sales and use tax.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would amend Chapter 151 of the Tax Code to make technical changes and clarifications to provisions relating to sales tax exemptions for drugs or medicines, seedlings for trees grown for commercial timber, and aircraft. The bill would also repeal Section 151.0232 of the Tax Code, relating to the Comptroller of Public Account's CPA Audit Program.

According to the Comptroller, the bill would clarify technical issues regarding the administration of certain sales tax exemptions and would have no fiscal impact.

The bill would take effect immediately upon enactment if it receives two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, CT, SD, EB

