

## **BILL ANALYSIS**

C.S.H.B. 2319  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, public schools and other tax-exempt organizations may claim an exemption from sales tax for items sold in fundraisers. This tax exemption was enacted by the legislature to relieve schools from the sales tax collection burden, encourage Texans to support school fundraisers, and increase funding for school programs. For many Texas public schools and other tax-exempt organizations, these tax-exempt fundraising sales conducted by parents and students are critical to the survival of various educational and extracurricular programs that otherwise would not have adequate funding. These tax-exempt fundraisers help pay for computers, field trips, athletics, music, art, and other programs, and in recent years the necessity for fundraising to support school programs has increased. The technical aspects of the tax exemption have proven to be problematic administrative burdens for schools, fundraising suppliers, and the comptroller of public accounts. This legislation will encourage community support of public schools and allow the money raised by school fundraisers to be used for educational purposes, rather than administrative compliance.

C.S.H.B. 2319 amends the law governing sales tax exemptions for certain organizations to prohibit the comptroller of public accounts from regarding certain organizations qualifying for an exemption from the state sales tax as the agent of the organization's wholesale supplier or distributor if, in exchange for consideration, title to taxable items is transferred from the supplier or distributor to the organization for purposes of the sale of those items at a tax-free sale or auction.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2319 amends the Tax Code to prohibit the comptroller of public accounts from regarding certain organizations that qualify for an exemption from the state sales and use tax on the basis of the organization's religious, educational, or charitable status or exemption from federal income taxes under certain provisions of the Internal Revenue Code as the agent of the organization's wholesale supplier or distributor if, in exchange for consideration, title to taxable items is transferred under a contract, purchase order, invoice, shipping document, or other proof from the supplier or distributor to the organization for purposes of the sale of those items at a tax-free sale or auction. The bill establishes that the bill's provisions do not affect tax liability accruing before the effective date of the bill.

### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2319 omits provisions included in the original defining "agent in fact," "market," "net sales proceeds," and "occasional." The substitute omits provisions included in the original defining "fundraiser" to mean an occasional event in which net sales proceeds are received by a qualified organization and items are sold or marketed for not longer than 14 consecutive days, and striking existing statutory language that limits an organization or a bona fide chapter of the organization to holding two one-day tax-free sales or auctions in a calendar year; limits two organizations that hold a joint sale or auction to each holding one additional sale or auction in the same calendar year; and provides that hiring an auctioneer does not disqualify the organization from receiving the exemption.

The substitute omits provisions included in the original defining "qualified organization," specifying that the term includes a bona fide chapter of such an organization, and making conforming changes.

C.S.H.B. 2319 omits provisions included in the original specifying that the sale of a taxable item priced at not more than \$5,000 by a qualified organization is exempt from sales, excise, and use taxes if the sale occurs in a fundraiser and the qualified organization purchases and receives delivery of the item from a wholesale supplier or distributor, and resells and delivers the item to a consumer, regardless of the sequence in which the product is marketed, purchased, received, sold, and delivered by the organization.

The substitute omits provisions in the original authorizing a qualified organization purchasing a taxable item for resale in a fundraiser to claim the sale for resale exemption, without holding a sales tax permit, and establishing that that organization is considered to have purchased an item for fundraising resale if the organization receives title for consideration under certain forms of proof.

C.S.H.B. 2319 differs from the original by prohibiting the comptroller from regarding an organization that qualifies for an exemption as the agent of the organization's wholesale supplier or distributor if, in exchange for consideration, title to taxable items is transferred to the organization for purposes of the sale of those items at a tax-free sale or auction, whereas the original applies the prohibition unless the organization is the agent in fact of the supplier or distributor.

C.S.H.B. 2319 adds an administrative provision not included in the original establishing that the changes made by the bill do not affect tax liability accruing before the effective date of the bill.