

By: Eissler

H.B. No. 2319

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the sales tax treatment of a fundraising sale by a
3 qualified organization.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 151.310, Tax Code, is amended by
6 amending Subsections (c) and (d) and adding Subsections (b-1),
7 (c-1), (c-2), and (c-3) to read as follows:

8 (b-1) In this section:

9 (1) "Agent in fact" means one who is authorized in
10 writing to act as the agent of another.

11 (2) "Market" means to offer for sale an item to be
12 ordered.

13 (3) "Net sales proceeds" means gross sales proceeds
14 from the sale of a taxable item, less the cost of acquiring or
15 making the item, delivery charges, and related expenses.

16 (4) "Occasional" means occurring from time to time,
17 whether at regular or irregular intervals.

18 (5) "Fundraiser" means an occasional event in which:

19 (A) the net sales proceeds of the event are
20 received or retained by a qualified organization; and

21 (B) one or more taxable or nontaxable items are:

22 (i) sold for not longer than 14 consecutive
23 days; or

24 (ii) marketed for not longer than 14

1 consecutive days.

2 (6) "Qualified organization" means an organization
3 that qualifies for an exemption under Subsection (a)(1) or (a)(2)
4 or a bona fide chapter of the organization.

5 (c) [~~An organization that qualifies for an exemption under~~
6 ~~Subsection (a)(1) or (a)(2) of this section, and each bona fide~~
7 ~~chapter of the organization, may hold two tax-free sales or~~
8 ~~auctions under this subsection during a calendar year and each~~
9 ~~tax-free sale or auction may continue for one day only.] The sale
10 of a taxable item the sales price of which is \$5,000 or less by a
11 qualified organization [~~or chapter of the organization at a~~
12 ~~tax-free sale or auction]~~ is exempted from the taxes [~~sales tax~~]
13 imposed by [~~Subchapter C of]~~ this chapter if:~~

- 14 (1) the sale occurs in a fundraiser; and
15 (2) the qualified organization purchases and receives
16 delivery of the item from a wholesale supplier or distributor, and
17 resells and delivers the item to a consumer, regardless of the
18 sequence in which the product is marketed, purchased, received,
19 sold and delivered by the organization.

20 (c-1) A [~~except that a~~] taxable item manufactured by or
21 donated to the qualified organization [~~or chapter of the~~
22 ~~organization]~~ may be sold tax free regardless of the sales price to
23 any purchaser other than the donor. The storage, use, or
24 consumption of a taxable item that is acquired from a qualified
25 organization [~~or chapter of the organization]~~ at a tax-free sale or
26 auction and that is exempted under this subsection from the taxes
27 imposed by Subchapter C [~~of this chapter]~~ is exempted from the use

1 tax imposed by Subchapter D [~~of this chapter~~] until the item is
2 resold or subsequently transferred.

3 (c-2) A qualified organization that purchases a taxable
4 item for resale in a fundraiser may claim the sale for resale
5 exemption. A qualified organization is not required to hold a sales
6 tax permit to claim the sale for resale exemption in connection with
7 a fundraiser.

8 (c-3) A qualified organization is considered to have
9 purchased, as that term is defined in Section 151.005, a taxable
10 item for resale in a fundraiser if the qualified organization
11 receives title for consideration under a contract, purchase order,
12 invoice, shipping document or other proof.

13 (d) The comptroller may not regard a qualified organization
14 that conducts a fundraiser as the agent of the organization's
15 wholesale supplier or distributor under Section 151.024 unless the
16 organization is the agent in fact of the supplier or distributor [~~if~~
17 ~~two or more organizations jointly hold a tax-free sale or auction,~~
18 ~~each organization may hold one additional tax-free sale or auction~~
19 ~~during the calendar year in which the joint sale or auction is held.~~
20 ~~The employment of and payment of a reasonable fee to an auctioneer~~
21 ~~to conduct a tax-free auction does not disqualify an otherwise~~
22 ~~qualified organization from receiving the exemption provided by~~
23 ~~Subsection (c)].~~

24 SECTION 2. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.