

BILL ANALYSIS

Senate Research Center
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H.B. 268
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, in Texas, agricultural exemptions for sales and use tax are offered for qualified purchases. The purpose of agricultural exemptions is to reduce the cost of agriculture-related products to consumers.

These exemptions are offered to all buyers providing they are purchasing qualified goods and/or services for qualified purposes. Sellers of these goods are required to determine exempt and non-exempt purchases and discern the use of the goods being purchased in order to accept the exemption request in good faith. The comptroller of public accounts (comptroller) holds the buyer and seller jointly responsible for the lawful use of agricultural exemptions. However, in practice, only the seller is held liable for non-qualified purchases. This creates an inherent conflict of interest between the buyer, seller, and the comptroller.

Over time, this conflict-of-interest has grown to include a substantial number of transactions between buyers and sellers that might not strictly fit the intent of the original law. The comptroller's recent attempts to refine the process to better serve the interested parties has not been completely successful. The current system continues to be a poorly understood and often abused process that serves neither the state nor those for whom it was intended to benefit.

H.B. 268 requires purchasers of certain agricultural items who claim a sales and use tax exemption to apply for an exemption number from the comptroller. The exemption number must be shown on the purchaser's exemption certificate. Persons applying for an exemption number must own or operate a farm or ranch as defined in current law. An application for an exemption number must be on a form from the comptroller, and provide the name and address of the business owned, the type of crops, livestock, or other agricultural products sold, and any other data the comptroller deems necessary. Exemption numbers would be subject to renewal every four years.

H.B. 268 amends current law relating to the exemption from sales and use taxes, including the motor vehicle sales and use tax, for timber and certain items used on a farm, ranch, or timber operation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 151.1551, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 151, Tax Code, by adding Section 151.1551, as follows:

Sec. 151.1551. EXEMPTION NUMBER REQUIRED FOR TIMBER ITEMS AND CERTAIN AGRICULTURAL PROPERTY. (a) Requires that an exemption number, to qualify for an exemption for an item under Section 151.316(a)(3) (relating to feed for farm and ranch animals), (6) (relating to fertilizers, fungicides, insecticides, herbicides, defoliant, and desiccants exclusively used or employed on a farm or ranch in the production of certain items), (7) (relating to machinery and equipment exclusively used

or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of certain items), (10) (relating to tangible personal property, including a tire, sold or used to be installed as a component part of a motor vehicle, machinery, or other equipment exclusively used or employed on a farm or ranch in a certain manner), or (12) (relating to tangible personal property incorporated into a structure that is used for the disposal of poultry carcasses) or an item or tangible personal property under Section 151.316(b) (relating to exempting tangible personal property sold or used to be installed as a component of an underground irrigation system from certain taxes under certain conditions) or 151.3162(b) (relating to exempting certain timber items from certain taxes), be stated on the exemption certificate provided by the purchaser.

(b) Provides that a person is eligible for an exemption number if the person uses or intends to use an item or property listed under Subsection (a) that qualifies for an exemption under Section 151.316 (Agricultural Items) on a farm or ranch, as those terms are defined by Section 151.316(c) (relating to definitions), or that qualifies for an exemption under Section 151.3162 (Timber Items) on a timber operation.

(c) Authorizes a person who is eligible to apply to the comptroller of public accounts (comptroller) for an exemption number. Requires that the application:

(1) be on a form prescribed by the comptroller;

(2) if applicable, state the types of crops, livestock, or other agricultural products that are produced for sale on the farm or ranch on which the applicant will use or employ the item or property listed under Subsection (a) or state that the item or property will be used in relation to a timber operation;

(3) if applicable, state the name and address of the business owned or operated or to be owned or operated by the applicant in relation to which the applicant will use the exempt item or property; and

(4) contain any other information required by the comptroller.

(d) Requires the comptroller by rule to develop and implement a procedure by which an applicant may submit an application described by Subsection (c) electronically.

(e) Requires the comptroller by rule to establish a uniform date on which all exemption numbers issued under this section must be renewed, regardless of the date on which an exemption number is initially issued. Requires that the rules require exemption numbers to be renewed every four years.

(f) Prohibits the comptroller from issuing an exemption number that contains an individual's social security number.

(g) Authorizes the comptroller, after adequate written notice and a hearing, to suspend or revoke the exemption number issued to a person who fails to comply with this chapter or with a rule adopted under this chapter. Requires the person, at the hearing, to show cause why the person's exemption number should not be suspended or revoked.

(h) Requires the comptroller to give written notice of the suspension or revocation of an exemption number under Subsection (g) to the person to whom the number was issued. Authorizes that the notice be personally served on the person or sent by mail to the person's address as shown in the comptroller's records.

(i) Prohibits a person, if the comptroller revokes the person's exemption number under Subsection (g), from being issued a new exemption number unless the comptroller is satisfied that the person will comply with this chapter and the rules adopted under this chapter. Authorizes the comptroller to prescribe the terms under which a suspended exemption number may be reinstated.

(j) Authorizes a taxpayer to appeal the suspension or revocation of an exemption number in the same manner that appeals are made from a final deficiency determination.

(k) Requires the comptroller by rule to develop and operate an online system to enable a seller of an item or property described by Subsection (a) to search and verify the validity of the exemption number stated on an exemption certificate. Provides that a seller is not required to use the online system.

(l) Provides that an exemption certificate that states an exemption number is sufficient documentation of the seller's receipt of the certificate in good faith for purposes of Sections 151.054 (Gross Receipts Presumed Subject to Tax) and 151.104 (Sale for Storage, Use, or Consumption Presumed).

SECTION 2. Reenacts Section 151.316(a), Tax Code, as amended by Chapters 1162 (H.B. 3144) and 1373 (S.B. 958), Acts of the 81st Legislature, Regular Session, 2009, and amends it to provide that, subject to Section 151.1551, certain items as set forth in this subsection are exempted from the taxes imposed by this chapter.

SECTION 3. Amends Section 151.316(b), Tax Code, to provide that, subject to Section 151.1551, tangible personal property sold or used to be installed as a component of an underground irrigation system is exempt from the taxes imposed by this chapter if the system is exclusively used or employed on a farm or ranch in the production of certain products.

SECTION 4. Amends Section 151.3162(b), Tax Code, to provide that, subject to Section 151.1551, certain items are exempted from the tax imposed by this chapter.

SECTION 5. Amends Section 152.091, Tax Code, by adding Subsection (a-1) and amending Subsections (b) and (c), as follows:

(a-1) Provides that, in addition to the other requirements prescribed by this section, the exemption provided by Subsection (a) (relating to certain taxes not applying to the sale or use of certain equipment) applies only if the person purchasing or using the machine, trailer, or semitrailer provides an exemption certificate with an exemption number issued to the purchaser or user under Section 151.1551.

(b)(1) Makes no changes to this subdivision.

(2) Provides that the exemption provided by this subsection applies only if the person purchasing the machine, trailer, or semitrailer to be leased presents the tax assessor-collector a form prescribed and provided by the comptroller showing certain information, including an exemption number issued to the purchaser under Section 151.1551. Makes a nonsubstantive change.

(3) Makes no changes to this subdivision.

(c) Provides that the exemption provided by this subsection applies only if the owner of the motor vehicle obtains in good faith an exemption certificate from the person to whom the vehicle is being rented that includes an exemption number issued under Section 151.1551.

SECTION 6. Provides that, notwithstanding Section 151.1551, Tax Code, as added by this Act, a person is not required to state an exemption number on an exemption certificate or on a form

prescribed by the comptroller to qualify for an exemption under Section 151.316, 151.3162, or 152.091 (Farm or Timber Use), Tax Code, that is claimed before January 1, 2012.

SECTION 7. Provides that the change in law made by this Act does not affect tax liability accruing before January 1, 2012. Provides that 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 8. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. Effective date: September 1, 2011.