

## **BILL ANALYSIS**

C.S.H.B. 268  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, exemptions from the sales tax are offered for qualified purchases of certain agricultural or timber items and property to reduce costs for consumers. Sellers of such items and properties determine exempt and nonexempt purchases and discern the use of the items being purchased in order to accept an exemption certificate stating qualifications for an exemption in good faith. The comptroller of public accounts holds both the buyer and the seller responsible for the lawful use of agricultural and timber exemptions, but interested parties contend that, in practice, only the seller is held liable for nonqualified purchases, which creates a conflict of interest between buyers, sellers, and the comptroller.

C.S.H.B. 268 seeks to increase state revenue by the elimination of certain tax exempt sales of agricultural or timber items and property to unqualified buyers and to provide protection to sellers who, in good faith, allow tax exempt sales of such items and property to qualified buyers, while reserving all current sales tax exemptions for qualified agricultural or timber producers.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 268 amends the Tax Code to require an exemption number to be stated on an exemption certificate provided by the purchaser of certain agricultural or timber items or tangible personal property in order for such items and property to qualify for an exemption from the sales tax. The bill makes a person eligible for an exemption number if the person uses or intends to use certain agricultural or timber items or property on a farm or ranch or a timber operation, as applicable, that qualifies for a sales tax exemption. The bill authorizes a person who is eligible to apply to the comptroller of public accounts for an exemption number, requires the application to be on a form prescribed by the comptroller, and specifies certain information to be included in the application. The bill requires the comptroller by rule to develop and implement a procedure by which an applicant may submit an application electronically and to establish a uniform date on which all exemption numbers issued under the bill's provisions must be renewed, regardless of the date on which an exemption number is initially issued. The bill requires the rules to require exemption numbers to be renewed every four years. The bill prohibits the comptroller from issuing an exemption number that contains an individual's social security number.

C.S.H.B. 268 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 provisions of law relating to the sales tax or a rule adopted under such provisions. The bill requires the person at the hearing to show cause why the person's exemption number should not be suspended or revoked. The bill requires the comptroller to give written notice of an exemption number suspension or revocation to the person to whom the number was issued and authorizes the notice

to be personally served on the person or sent by mail to the person's address as shown in the comptroller's records. The bill prohibits a person, if the comptroller revokes the person's exemption number, from being issued a new exemption number unless the comptroller is satisfied that the person will comply with provisions of law relating to the sales tax or a rule adopted under such provisions. The bill authorizes the comptroller to prescribe the terms under which a suspended exemption number may be reinstated and 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.

C.S.H.B. 268 requires the comptroller by rule to develop and operate an online system to enable a seller of certain agricultural or timber items and property to search and verify the validity of the exemption number stated on an exemption certificate. The bill establishes that a seller is not required to use the online system. The bill establishes 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 provisions of law relating to gross receipts being presumed to be subject to the sales tax and provisions of law relating to a sale of a taxable item being presumed to be a sale for storage, use, or consumption in Texas. The bill makes conforming changes.

C.S.H.B. 268 reenacts and amends 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, to make a conforming change.

C.S.H.B. 268 makes the tax exemption for the sale or use of a machine, trailer, or semitrailer for use primarily for farming, ranching, or timber operations applicable only if the person purchasing or using the machine, trailer, or semitrailer provides an exemption certificate with an exemption number issued to the purchaser. The bill includes the exemption number issued to the purchaser among the information required to be on the form presented by the person purchasing a machine, trailer, or semitrailer to be leased for use primarily for farming, ranching, or timber operations to the tax assessor-collector in order to receive the tax exemption for the purchase of the machine, trailer, or semitrailer that is to be leased. The bill requires an exemption certificate, obtained in good faith from a person to whom a machine, trailer, or semitrailer is being rented for use primarily for farming, ranching, or timber operations by the owner of the vehicle in order to qualify for an exemption for the rental, to include an exemption number.

C.S.H.B. 268 establishes that 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 provisions of law relating to agricultural items, timber items, or farm or timber use that is claimed before January 1, 2012, and that the bill's provisions do not affect tax liability accruing before that date. The bill establishes that, to the extent of any conflict, the bill's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 268 contains a provision not included in the original requiring an exemption number to be stated on an exemption certificate provided by the purchaser of certain timber items and property in order for such items to qualify for an exemption from the sales tax. The substitute differs from the original by making a person eligible for an exemption number if the person uses or intends to use certain agricultural or timber items or property on a farm or ranch or timber operation, as applicable, that qualifies for a sales tax exemption, whereas the original makes a person eligible for an exemption number if the person owns or operates a business that uses one or more tracts of land in Texas as a farm or ranch.

C.S.H.B. 268 differs from the original by requiring the application for an exemption number to state the types of agricultural products that are produced for sale on the farm or ranch on which the applicant will use or employ the item or property or to state that the item or property will be used in relation to a timber operation, as applicable, whereas the original requires the application for an exemption number to state the types of agricultural products that are held for sale in the regular course of the business owned or operated or to be owned or operated by the applicant. The substitute contains a provision not included in the original specifying that the business owned or operated or to be owned or operated by the applicant for an exemption number as stated in the application form be in relation to which the applicant will use the exempt item or property and that such a statement be included as applicable.

C.S.H.B. 268 contains a provision not included in the original prohibiting the comptroller of public accounts from issuing an exemption number that contains an individual's social security number.

C.S.H.B. 268 omits provisions included in the original specifying that the online system required to be developed and operated by the comptroller that enables a seller of certain agricultural or timber items and property to search and verify the validity of the exemption number stated on an exemption certificate do so at the time the certificate is received and requiring that the system enable the seller to provide documentation of the verification. The substitute differs from the original by establishing 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 provisions of law relating to gross receipts being presumed to be subject to the sales tax and provisions of law relating to a sale of a taxable item being presumed to be a sale for storage, use, or consumption in Texas, whereas the original establishes that documentation provided by the online system constitutes proof that the exemption certificate was received in good faith for the same purposes. The substitute contains a provision not included in the original making a conforming change relating to the requirement of an exemption number for the purchase of certain timber items and property in order to qualify for an exemption from the sales tax.

C.S.H.B. 268 contains provisions not included in the original requiring the provision or inclusion of an exemption number issued for a purchaser of certain timber items and property in order for the purchase, lease, or rental of a machine, trailer, or semitrailer for use primarily for farming, ranching, or timber operations to qualify for a tax exemption.

C.S.H.B. 268 contains a provision not included in the original establishing that a person is not required to state an exemption number on a form prescribed by the comptroller to qualify for an exemption under provisions of law relating to agricultural items, timber items, or farm or timber use that is claimed before January 1, 2012.