

By: Hilderbran

H.B. No. 268

Substitute the following for H.B. No. 268:

By: Otto

C.S.H.B. No. 268

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the exemption from sales and use taxes, including the
3 motor vehicle sales and use tax, for timber and certain items used
4 on a farm, ranch, or timber operation.

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

6 SECTION 1. Subchapter E, Chapter 151, Tax Code, is amended
7 by adding Section 151.1551 to read as follows:

8 Sec. 151.1551. EXEMPTION NUMBER REQUIRED FOR TIMBER ITEMS
9 AND CERTAIN AGRICULTURAL PROPERTY. (a) To qualify for an exemption
10 for an item under Section 151.316(a)(3), (6), (7), (10), or (12) or
11 an item or tangible personal property under Section 151.316(b) or
12 151.3162(b), an exemption number must be stated on the exemption
13 certificate provided by the purchaser.

14 (b) A person is eligible for an exemption number if the
15 person uses or intends to use an item or property listed under
16 Subsection (a) that qualifies for an exemption under Section
17 151.316 on a farm or ranch, as those terms are defined by Section
18 151.316(c), or that qualifies for an exemption under Section
19 151.3162 on a timber operation.

20 (c) A person who is eligible may apply to the comptroller
21 for an exemption number. The application must:

- 22 (1) be on a form prescribed by the comptroller;
23 (2) if applicable, state the types of crops,
24 livestock, or other agricultural products that are produced for

1 sale on the farm or ranch on which the applicant will use or employ
2 the item or property listed under Subsection (a) or state that the
3 item or property will be used in relation to a timber operation;

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

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

10 (d) The comptroller by rule shall develop and implement a
11 procedure by which an applicant may submit an application described
12 by Subsection (c) electronically.

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

18 (f) The comptroller may not issue an exemption number that
19 contains an individual's social security number.

20 (g) The comptroller, after adequate written notice and a
21 hearing, may suspend or revoke the exemption number issued to a
22 person who fails to comply with this chapter or with a rule adopted
23 under this chapter. At the hearing the person must show cause why
24 the person's exemption number should not be suspended or revoked.

25 (h) The comptroller shall give written notice of the
26 suspension or revocation of an exemption number under Subsection
27 (g) to the person to whom the number was issued. The notice may be

1 personally served on the person or sent by mail to the person's
2 address as shown in the comptroller's records.

3 (i) If the comptroller revokes a person's exemption number
4 under Subsection (g), the person may not be issued a new exemption
5 number unless the comptroller is satisfied that the person will
6 comply with this chapter and the rules adopted under this chapter.
7 The comptroller may prescribe the terms under which a suspended
8 exemption number may be reinstated.

9 (j) A taxpayer may appeal the suspension or revocation of an
10 exemption number in the same manner that appeals are made from a
11 final deficiency determination.

12 (k) The comptroller by rule shall develop and operate an
13 online system to enable a seller of an item or property described by
14 Subsection (a) to search and verify the validity of the exemption
15 number stated on an exemption certificate. A seller is not required
16 to use the online system.

17 (l) An exemption certificate that states an exemption
18 number is sufficient documentation of the seller's receipt of the
19 certificate in good faith for purposes of Sections 151.054 and
20 151.104.

21 SECTION 2. Section 151.316(a), Tax Code, as amended by
22 Chapters 1162 (H.B. 3144) and 1373 (S.B. 958), Acts of the 81st
23 Legislature, Regular Session, 2009, is reenacted and amended to
24 read as follows:

25 (a) Subject to Section 151.1551, the ~~The~~ following items
26 are exempted from the taxes imposed by this chapter:

27 (1) horses, mules, and work animals;

- 1 (2) animal life the products of which ordinarily
2 constitute food for human consumption;
- 3 (3) feed for farm and ranch animals;
- 4 (4) feed for animals that are held for sale in the
5 regular course of business;
- 6 (5) seeds and annual plants the products of which:
- 7 (A) ordinarily constitute food for human
8 consumption;
- 9 (B) are to be sold in the regular course of
10 business; or
- 11 (C) are used to produce feed for animals exempted
12 by this section;
- 13 (6) fertilizers, fungicides, insecticides,
14 herbicides, defoliants, and desiccants exclusively used or
15 employed on a farm or ranch in the production of:
- 16 (A) food for human consumption;
- 17 (B) feed for animal life; or
- 18 (C) other agricultural products to be sold in the
19 regular course of business;
- 20 (7) machinery and equipment exclusively used or
21 employed on a farm or ranch in the building or maintaining of roads
22 or water facilities or in the production of:
- 23 (A) food for human consumption;
- 24 (B) grass;
- 25 (C) feed for animal life; or
- 26 (D) other agricultural products to be sold in the
27 regular course of business;

1 (8) machinery and equipment exclusively used in, and
2 pollution control equipment required as a result of, the
3 processing, packing, or marketing of agricultural products by an
4 original producer at a location operated by the original producer
5 for processing, packing, or marketing the producer's own products
6 if:

7 (A) 50 percent or more of the products processed,
8 packed, or marketed at or from the location are produced by the
9 original producer and not purchased or acquired from others; and

10 (B) the producer does not process, pack, or
11 market for consideration any agricultural products that belong to
12 other persons in an amount greater than five percent of the total
13 agricultural products processed, packed, or marketed by the
14 producer;

15 (9) ice exclusively used by commercial fishing boats
16 in the storing of aquatic species including but not limited to
17 shrimp, other crustaceans, finfish, mollusks, and other similar
18 creatures;

19 (10) tangible personal property, including a tire,
20 sold or used to be installed as a component part of a motor vehicle,
21 machinery, or other equipment exclusively used or employed on a
22 farm or ranch in the building or maintaining of roads or water
23 facilities or in the production of:

24 (A) food for human consumption;

25 (B) grass;

26 (C) feed for animal life; or

27 (D) other agricultural products to be sold in the

1 regular course of business;

2 (11) machinery and equipment exclusively used in an
3 agricultural aircraft operation, as defined by 14 C.F.R. Section
4 137.3; and

5 (12) tangible personal property incorporated into a
6 structure that is used for the disposal of poultry carcasses in
7 accordance with Section 26.303, Water Code.

8 SECTION 3. Section 151.316(b), Tax Code, is amended to read
9 as follows:

10 (b) Subject to Section 151.1551, tangible [~~Tangible~~]
11 personal property sold or used to be installed as a component of an
12 underground irrigation system is exempt from the taxes imposed by
13 this chapter if the system is exclusively used or employed on a farm
14 or ranch in the production of:

15 (1) food for human consumption;

16 (2) grass;

17 (3) feed or forage for:

18 (A) animal life the products of which ordinarily
19 constitute food for human consumption; or

20 (B) horses, mules, and work animals; or

21 (4) other agricultural products to be sold in the
22 regular course of business.

23 SECTION 4. Section 151.3162(b), Tax Code, is amended to
24 read as follows:

25 (b) Subject to Section 151.1551, the [~~The~~] following items
26 are exempted from the tax imposed by this chapter:

27 (1) seedlings of trees grown for commercial timber;

1 (2) defoliants, desiccants, equipment, fertilizers,
2 fungicides, herbicides, insecticides, and machinery exclusively
3 used in the production of timber to be sold in the regular course of
4 business;

5 (3) machinery and equipment used in, and pollution
6 control equipment required as a result of, the processing, packing,
7 or marketing of timber products by an original producer if:

8 (A) the processing, packing, or marketing occurs
9 at or from a location operated by the original producer;

10 (B) at least 50 percent of the value of the timber
11 products processed, packed, or marketed at or from the location is
12 attributable to products produced by the original producer and not
13 purchased or acquired from others; and

14 (C) the original producer does not process, pack,
15 or market for consideration timber products that belong to another
16 person with a value greater than five percent of the total value of
17 the timber products processed, packed, or marketed by the producer;
18 and

19 (4) tangible personal property sold or used to be
20 installed as a component of an underground irrigation system
21 exclusively used in the production of timber to be sold in the
22 regular course of business.

23 SECTION 5. Section 152.091, Tax Code, is amended by adding
24 Subsection (a-1) and amending Subsections (b) and (c) to read as
25 follows:

26 (a-1) In addition to the other requirements prescribed by
27 this section, the exemption provided by Subsection (a) applies only

1 if the person purchasing or using the machine, trailer, or
2 semitrailer provides an exemption certificate with an exemption
3 number issued to the purchaser or user under Section 151.1551.

4 (b)(1) The taxes imposed by this chapter do not apply to the
5 purchase of a:

6 (A) farm machine, trailer, or semitrailer that is
7 to be leased for use primarily for farming and ranching, including
8 the rearing of poultry, and use in feedlots; or

9 (B) machine, trailer, or semitrailer that is to
10 be leased for use primarily for timber operations.

11 (2) The exemption provided by this subsection applies
12 only if the person purchasing the machine, trailer, or semitrailer
13 to be leased presents the tax assessor-collector a form prescribed
14 and provided by the comptroller showing:

15 (A) the identification of the motor vehicle;

16 (B) the name and address of the lessor and the
17 lessee; ~~and~~

18 (C) an exemption number issued to the purchaser
19 under Section 151.1551; and

20 (D) verification by the lessee that the machine,
21 trailer, or semitrailer will be used primarily for:

22 (i) farming and ranching, including the
23 rearing of poultry, and use in feedlots; or

24 (ii) timber operations.

25 (3) If a motor vehicle for which the tax has not been
26 paid ceases to be leased for use primarily for farming and ranching,
27 including the rearing of poultry, and use in feedlots or timber

1 operations, the owner shall notify the comptroller on a form
2 provided by the comptroller and shall pay the sales or use tax on
3 the motor vehicle based on the owner's book value of the motor
4 vehicle. The tax is imposed at the same percentage rate that is
5 provided by Section 152.021(b).

6 (c) The taxes imposed by this chapter do not apply to the
7 rental of a farm machine, a trailer, or a semitrailer for use
8 primarily for farming and ranching, including the rearing of
9 poultry, and use in feedlots, or a machine, a trailer, or a
10 semitrailer for use primarily for timber operations. The tax that
11 would have been remitted on gross rental receipts without this
12 exemption shall be deemed to have been remitted for the purpose of
13 calculating the minimum gross rental receipts imposed by Section
14 152.026. The exemption provided by this subsection applies only if
15 the owner of the motor vehicle obtains in good faith an exemption
16 certificate from the person to whom the vehicle is being rented that
17 includes an exemption number issued under Section 151.1551.

18 SECTION 6. Notwithstanding Section 151.1551, Tax Code, as
19 added by this Act, a person is not required to state an exemption
20 number on an exemption certificate or on a form prescribed by the
21 comptroller of public accounts to qualify for an exemption under
22 Section 151.316, 151.3162, or 152.091, Tax Code, that is claimed
23 before January 1, 2012.

24 SECTION 7. The change in law made by this Act does not
25 affect tax liability accruing before January 1, 2012. That
26 liability continues in effect as if this Act had not been enacted,
27 and the former law is continued in effect for the collection of

1 taxes due and for civil and criminal enforcement of the liability
2 for those taxes.

3 SECTION 8. To the extent of any conflict, this Act prevails
4 over another Act of the 82nd Legislature, Regular Session, 2011,
5 relating to nonsubstantive additions to and corrections in enacted
6 codes.

7 SECTION 9. This Act takes effect September 1, 2011.