

1-1 By: Hilderbran (Senate Sponsor - Seliger) H.B. No. 268  
1-2 (In the Senate - Received from the House April 26, 2011;  
1-3 April 27, 2011, read first time and referred to Committee on  
1-4 Finance; May 12, 2011, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 14, Nays 0;  
1-6 May 12, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 268 By: Seliger

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the exemption from sales and use taxes, including the  
1-11 motor vehicle sales and use tax, for timber and certain items used  
1-12 in or on a farm, ranch, timber operation, or agricultural aircraft  
1-13 operation.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subchapter E, Chapter 151, Tax Code, is amended  
1-16 by adding Section 151.1551 to read as follows:

1-17 Sec. 151.1551. REGISTRATION NUMBER REQUIRED FOR TIMBER AND  
1-18 CERTAIN AGRICULTURAL ITEMS. (a) This section applies to an  
1-19 exemption provided by:

1-20 (1) Sections 151.316(a)(6), (7), (8), (10), (11), and  
1-21 (12);

1-22 (2) Section 151.316(b) for tangible personal property  
1-23 used in the production of agricultural products for sale;

1-24 (3) Section 151.3162(b) for tangible personal  
1-25 property used in the production of timber for sale;

1-26 (4) Sections 151.317(a)(5) and (10) for electricity  
1-27 used in agriculture or timber operations; and

1-28 (5) Section 151.3111 for services performed on  
1-29 tangible personal property exempted under Section 151.316(a)(6),  
1-30 (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

1-31 (b) To claim an exemption to which this section applies, a  
1-32 registration number issued by the comptroller must be stated on the  
1-33 exemption certificate provided by the purchaser of the item.

1-34 (c) A person is eligible to apply for a registration number  
1-35 if the person is engaged in the production of agricultural products  
1-36 or timber for sale or in an agricultural aircraft operation as  
1-37 defined by 14 C.F.R. Section 137.3.

1-38 (d) A person who is eligible may apply to the comptroller  
1-39 for a registration number. The application must:

1-40 (1) be on a form prescribed by the comptroller;

1-41 (2) if applicable, state the types of crops,  
1-42 livestock, or other agricultural products that are produced for  
1-43 sale on the farm or ranch on which the applicant will use or employ  
1-44 the item described by Subsection (a) or state that the item will be  
1-45 used in relation to a timber operation or an agricultural aircraft  
1-46 operation as defined by 14 C.F.R. Section 137.3;

1-47 (3) as applicable, state the name and address of the  
1-48 farm, ranch, timber operation, or other business owned or operated  
1-49 by the applicant in relation to which the applicant will use the  
1-50 item; and

1-51 (4) contain any other information required by the  
1-52 comptroller.

1-53 (e) The comptroller shall develop and implement a procedure  
1-54 by which an applicant may submit an application described by  
1-55 Subsection (d) electronically.

1-56 (f) The comptroller by rule shall establish a uniform date  
1-57 on which all registration numbers issued under this section must be  
1-58 renewed, regardless of the date on which a registration number is  
1-59 initially issued. The rules must require registration numbers to  
1-60 be renewed every four years.

1-61 (g) The comptroller may not issue a registration number that  
1-62 contains an individual's social security number.

1-63 (h) The comptroller, after written notice and a hearing, may

2-1 revoke the registration number issued to a person who fails to  
 2-2 comply with this chapter or with a rule adopted under this chapter.  
 2-3 A person whose registration number the comptroller proposes to  
 2-4 revoke under this section is entitled to 20 days' written notice of  
 2-5 the time and place of the hearing on the revocation. The notice  
 2-6 must state the reason the comptroller is seeking to revoke the  
 2-7 person's registration number. At the hearing the person must show  
 2-8 cause why the person's registration number should not be revoked.

2-9 (i) The comptroller shall give written notice of the  
 2-10 revocation of a registration number under Subsection (h) to the  
 2-11 person to whom the number was issued. The notice may be personally  
 2-12 served on the person or sent by mail to the person's address as  
 2-13 shown in the comptroller's records.

2-14 (j) If the comptroller revokes a person's registration  
 2-15 number under Subsection (h), the comptroller may not revive the  
 2-16 registration number unless the comptroller is satisfied that the  
 2-17 person will comply with this chapter and the rules adopted under  
 2-18 this chapter. The comptroller may prescribe the terms under which a  
 2-19 revoked registration number may be revived.

2-20 (k) Following the revocation of a registration number by the  
 2-21 comptroller, the person who held the registration number must, on  
 2-22 the next transaction with each seller to whom the person previously  
 2-23 issued a claim for exemption with a registration number, notify  
 2-24 that seller that the person's registration number is no longer  
 2-25 valid. The failure of a person to notify a seller as required by  
 2-26 this subsection is considered a failure and refusal to pay the taxes  
 2-27 imposed by this chapter by the person required to make the  
 2-28 notification.

2-29 (l) The comptroller shall develop and operate an online  
 2-30 system to enable a seller of an item described by Subsection (a) to  
 2-31 search and verify the validity of the registration number stated on  
 2-32 an exemption certificate. A seller is not required to use the  
 2-33 online system.

2-34 (m) An exemption certificate that states a registration  
 2-35 number issued by the comptroller to claim an exemption to which this  
 2-36 section applies is sufficient documentation of the seller's receipt  
 2-37 of the certificate in good faith for purposes of Sections 151.054  
 2-38 and 151.104.

2-39 (n) The comptroller by rule shall establish procedures by  
 2-40 which a seller may accept a blanket exemption certificate with a  
 2-41 registration number issued by the comptroller to claim exemptions  
 2-42 to which this section applies.

2-43 (o) A use of an item purchased using an exemption  
 2-44 certificate with a registration number issued under this section in  
 2-45 a manner or for a purpose other than the manner or purpose that  
 2-46 qualified the sale, lease, rental, or other consumption of the item  
 2-47 for the exemption may result in the revocation of the number.

2-48 (p) A person eligible for a registration number who, at the  
 2-49 time of purchasing, leasing, renting, or otherwise consuming an  
 2-50 item for which the person may otherwise claim an exemption to which  
 2-51 this section applies, has not obtained a registration number from  
 2-52 the comptroller must pay the tax on the item to the seller at the  
 2-53 time of the transaction. The person may then apply for a  
 2-54 registration number and, on receipt of the number, may apply to the  
 2-55 comptroller for a refund of the tax paid, subject to the statute of  
 2-56 limitations. The comptroller by rule shall establish procedures  
 2-57 for processing the refund requests. Tax collected by a seller under  
 2-58 this subsection is not tax collected in error, and Section 111.104  
 2-59 does not apply to a refund request submitted under this subsection.

2-60 SECTION 2. Section 151.3111(a), Tax Code, is amended to  
 2-61 read as follows:

2-62 (a) Subject to Section 151.1551, a [A] service that is  
 2-63 performed on tangible personal property that, if sold, leased, or  
 2-64 rented, at the time of the performance of the service, would be  
 2-65 exempted under this chapter because of the nature of the property,  
 2-66 its use, or a combination of its nature and use, is exempted from  
 2-67 this chapter.

2-68 SECTION 3. Section 151.316(a), Tax Code, as amended by  
 2-69 Chapters 1162 (H.B. 3144) and 1373 (S.B. 958), Acts of the 81st

3-1 Legislature, Regular Session, 2009, is reenacted and amended to  
 3-2 read as follows:  
 3-3 (a) Subject to Section 151.1551, the ~~[The]~~ following items  
 3-4 are exempted from the taxes imposed by this chapter:  
 3-5 (1) horses, mules, and work animals;  
 3-6 (2) animal life the products of which ordinarily  
 3-7 constitute food for human consumption;  
 3-8 (3) feed for farm and ranch animals;  
 3-9 (4) feed for animals that are held for sale in the  
 3-10 regular course of business;  
 3-11 (5) seeds and annual plants the products of which:  
 3-12 (A) ordinarily constitute food for human  
 3-13 consumption;  
 3-14 (B) are to be sold in the regular course of  
 3-15 business; or  
 3-16 (C) are used to produce feed for animals exempted  
 3-17 by this section;  
 3-18 (6) fertilizers, fungicides, insecticides,  
 3-19 herbicides, defoliant, and desiccants exclusively used or  
 3-20 employed on a farm or ranch in the production of:  
 3-21 (A) food for human consumption;  
 3-22 (B) feed for animal life; or  
 3-23 (C) other agricultural products to be sold in the  
 3-24 regular course of business;  
 3-25 (7) machinery and equipment exclusively used or  
 3-26 employed on a farm or ranch in the building or maintaining of roads  
 3-27 or water facilities or in the production of:  
 3-28 (A) food for human consumption;  
 3-29 (B) grass;  
 3-30 (C) feed for animal life; or  
 3-31 (D) other agricultural products to be sold in the  
 3-32 regular course of business;  
 3-33 (8) machinery and equipment exclusively used in, and  
 3-34 pollution control equipment required as a result of, the  
 3-35 processing, packing, or marketing of agricultural products by an  
 3-36 original producer at a location operated by the original producer  
 3-37 for processing, packing, or marketing the producer's own products  
 3-38 if:  
 3-39 (A) 50 percent or more of the products processed,  
 3-40 packed, or marketed at or from the location are produced by the  
 3-41 original producer and not purchased or acquired from others; and  
 3-42 (B) the producer does not process, pack, or  
 3-43 market for consideration any agricultural products that belong to  
 3-44 other persons in an amount greater than five percent of the total  
 3-45 agricultural products processed, packed, or marketed by the  
 3-46 producer;  
 3-47 (9) ice exclusively used by commercial fishing boats  
 3-48 in the storing of aquatic species including but not limited to  
 3-49 shrimp, other crustaceans, finfish, mollusks, and other similar  
 3-50 creatures;  
 3-51 (10) tangible personal property, including a tire,  
 3-52 sold or used to be installed as a component part of a motor vehicle,  
 3-53 machinery, or other equipment exclusively used or employed on a  
 3-54 farm or ranch in the building or maintaining of roads or water  
 3-55 facilities or in the production of:  
 3-56 (A) food for human consumption;  
 3-57 (B) grass;  
 3-58 (C) feed for animal life; or  
 3-59 (D) other agricultural products to be sold in the  
 3-60 regular course of business;  
 3-61 (11) machinery and equipment exclusively used in an  
 3-62 agricultural aircraft operation, as defined by 14 C.F.R. Section  
 3-63 137.3; and  
 3-64 (12) tangible personal property incorporated into a  
 3-65 structure that is used for the disposal of poultry carcasses in  
 3-66 accordance with Section 26.303, Water Code.  
 3-67 SECTION 4. Section 151.316(b), Tax Code, is amended to read  
 3-68 as follows:  
 3-69 (b) Subject to Section 151.1551, tangible ~~[Tangible]~~

4-1 personal property sold or used to be installed as a component of an  
 4-2 underground irrigation system is exempt from the taxes imposed by  
 4-3 this chapter if the system is exclusively used or employed on a farm  
 4-4 or ranch in the production of:

- 4-5 (1) food for human consumption;
- 4-6 (2) grass;
- 4-7 (3) feed or forage for:
  - 4-8 (A) animal life the products of which ordinarily
  - 4-9 constitute food for human consumption; or
  - 4-10 (B) horses, mules, and work animals; or
- 4-11 (4) other agricultural products to be sold in the
- 4-12 regular course of business.

4-13 SECTION 5. Section 151.3162(b), Tax Code, is amended to  
 4-14 read as follows:

4-15 (b) Subject to Section 151.1551, the ~~[The]~~ following items  
 4-16 are exempted from the tax imposed by this chapter:

- 4-17 (1) seedlings of trees grown for commercial timber;
- 4-18 (2) defoliant, desiccant, equipment, fertilizers,
- 4-19 fungicides, herbicides, insecticides, and machinery exclusively
- 4-20 used in the production of timber to be sold in the regular course of
- 4-21 business;
- 4-22 (3) machinery and equipment used in, and pollution
- 4-23 control equipment required as a result of, the processing, packing,
- 4-24 or marketing of timber products by an original producer if:
  - 4-25 (A) the processing, packing, or marketing occurs
  - 4-26 at or from a location operated by the original producer;
  - 4-27 (B) at least 50 percent of the value of the timber
  - 4-28 products processed, packed, or marketed at or from the location is
  - 4-29 attributable to products produced by the original producer and not
  - 4-30 purchased or acquired from others; and
  - 4-31 (C) the original producer does not process, pack,
  - 4-32 or market for consideration timber products that belong to another
  - 4-33 person with a value greater than five percent of the total value of
  - 4-34 the timber products processed, packed, or marketed by the producer;
  - 4-35 and
  - 4-36 (4) tangible personal property sold or used to be
  - 4-37 installed as a component of an underground irrigation system
  - 4-38 exclusively used in the production of timber to be sold in the
  - 4-39 regular course of business.

4-40 SECTION 6. Section 151.317(a), Tax Code, is amended to read  
 4-41 as follows:

4-42 (a) Subject to Section 151.1551 and Subsection (d) of this  
 4-43 section, gas and electricity are exempted from the taxes imposed by  
 4-44 this chapter when sold for:

- 4-45 (1) residential use;
- 4-46 (2) use in powering equipment exempt under Section
- 4-47 151.318 or 151.3185 by a person processing tangible personal
- 4-48 property for sale as tangible personal property, other than
- 4-49 preparation or storage of prepared food described by Section
- 4-50 151.314(c-2);
- 4-51 (3) use in lighting, cooling, and heating in the
- 4-52 manufacturing area during the actual manufacturing or processing of
- 4-53 tangible personal property for sale as tangible personal property,
- 4-54 other than preparation or storage of prepared food described by
- 4-55 Section 151.314(c-2);
- 4-56 (4) use directly in exploring for, producing, or
- 4-57 transporting, a material extracted from the earth;
- 4-58 (5) use in agriculture, including dairy or poultry
- 4-59 operations and pumping for farm or ranch irrigation;
- 4-60 (6) use directly in electrical processes, such as
- 4-61 electroplating, electrolysis, and cathodic protection;
- 4-62 (7) use directly in the off-wing processing, overhaul,
- 4-63 or repair of a jet turbine engine or its parts for a certificated or
- 4-64 licensed carrier of persons or property;
- 4-65 (8) use directly in providing, under contracts with or
- 4-66 on behalf of the United States government or foreign governments,
- 4-67 defense or national security-related electronics, classified
- 4-68 intelligence data processing and handling systems, or
- 4-69 defense-related platform modifications or upgrades;

5-1 (9) a direct or indirect use, consumption, or loss of  
5-2 electricity by an electric utility engaged in the purchase of  
5-3 electricity for resale; or

5-4 (10) use in timber operations, including pumping for  
5-5 irrigation of timberland.

5-6 SECTION 7. Section 152.091, Tax Code, is amended by adding  
5-7 Subsection (b-1) and amending Subsection (c) to read as follows:

5-8 (b-1) In addition to the other requirements prescribed by  
5-9 this section, to claim an exemption provided by Subsection (a) or  
5-10 (b) the person purchasing, using, or leasing the machine, trailer,  
5-11 or semitrailer must provide an exemption certificate with a  
5-12 registration number issued by the comptroller under Section  
5-13 151.1551.

5-14 (c) The taxes imposed by this chapter do not apply to the  
5-15 rental of a farm machine, a trailer, or a semitrailer for use  
5-16 primarily for farming and ranching, including the rearing of  
5-17 poultry, and use in feedlots, or a machine, a trailer, or a  
5-18 semitrailer for use primarily for timber operations. The tax that  
5-19 would have been remitted on gross rental receipts without this  
5-20 exemption shall be deemed to have been remitted for the purpose of  
5-21 calculating the minimum gross rental receipts imposed by Section  
5-22 152.026. The exemption provided by this subsection applies only if  
5-23 the owner of the motor vehicle obtains in good faith an exemption  
5-24 certificate from the person to whom the vehicle is being rented. To  
5-25 claim the exemption, the person renting the vehicle must also  
5-26 provide on the certificate a registration number issued by the  
5-27 comptroller under Section 151.1551.

5-28 SECTION 8. Notwithstanding Section 151.1551, Tax Code, as  
5-29 added by this Act, a person is not required to state a registration  
5-30 number on an exemption certificate or on a form prescribed by the  
5-31 comptroller of public accounts to claim an exemption to which  
5-32 Section 151.1551, Tax Code, as added by this Act, applies or an item  
5-33 under Section 152.091, Tax Code, that is claimed before January 1,  
5-34 2012.

5-35 SECTION 9. The change in law made by this Act does not  
5-36 affect tax liability accruing before January 1, 2012. That  
5-37 liability continues in effect as if this Act had not been enacted,  
5-38 and the former law is continued in effect for the collection of  
5-39 taxes due and for civil and criminal enforcement of the liability  
5-40 for those taxes.

5-41 SECTION 10. To the extent of any conflict, this Act prevails  
5-42 over another Act of the 82nd Legislature, Regular Session, 2011,  
5-43 relating to nonsubstantive additions to and corrections in enacted  
5-44 codes.

5-45 SECTION 11. This Act takes effect September 1, 2011.

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