

House Bill 268
Senate Amendments
Section-by-Section Analysis

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

Sec. 151.1551. EXEMPTION NUMBER REQUIRED FOR TIMBER ITEMS AND CERTAIN AGRICULTURAL PROPERTY.

To qualify for an exemption for an item under Section 151.316(a)(3), (6), (7), (10), or (12) or an item or tangible personal property under Section 151.316(b) or 151.3162(b), an exemption number must be stated on the exemption certificate provided by the purchaser.

(b) 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 on a farm or ranch, as those terms are defined by Section 151.316(c), or that qualifies for an exemption under Section 151.3162 on a timber operation.

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

- (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

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

Sec. 151.1551. REGISTRATION NUMBER REQUIRED FOR TIMBER AND CERTAIN AGRICULTURAL ITEMS.

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

(a) This section applies to an exemption provided by:

- (1) Sections 151.316(a)(6), (7), (8), (10), (11), and (12);
- (2) Section 151.316(b) for tangible personal property used in the production of agricultural products for sale;
- (3) Section 151.3162(b) for tangible personal property used in the production of timber for sale;
- (4) Sections 151.317(a)(5) and (10) for electricity used in agriculture or timber operations; and
- (5) Section 151.3111 for services performed on tangible personal property exempted under Section 151.316(a)(6), (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

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

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

- (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

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

(e) The comptroller by rule shall 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. The rules must require exemption numbers to be renewed every four years.

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

(g) The comptroller, after adequate written notice and a hearing, may 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. At the hearing the person must show cause why the person's exemption number should not be suspended or revoked.

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

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described by Subsection (a) or state that the item will be used in relation to a timber operation or an agricultural aircraft operation as defined by 14 C.F.R. Section 137.3;

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

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

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

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

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

(h) The comptroller, after written notice and a hearing, may revoke the registration number issued to a person who fails to comply with this chapter or with a rule adopted under this chapter. A person whose registration number the comptroller proposes to revoke under this section is entitled to 20 days' written notice of the time and place of the hearing on the revocation. The notice must state the reason the comptroller is seeking to revoke the person's registration number. At the hearing the person must show cause why the person's registration number should not be revoked.

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

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records.

(i) If the comptroller revokes a person's exemption number under Subsection (g), the person may not be 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. The comptroller may prescribe the terms under which a suspended exemption number may be reinstated.

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

(k) The comptroller by rule shall 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. A seller is not required to use the online system.

(l) 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 and 151.104.

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(i) If the comptroller revokes a person's registration number under Subsection (h), the comptroller may not revive the registration number unless the comptroller is satisfied that the person will comply with this chapter and the rules adopted under this chapter. The comptroller may prescribe the terms under which a revoked registration number may be revived.

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

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

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

(n) The comptroller by rule shall establish procedures by which a seller may accept a blanket exemption certificate with a registration number issued by the comptroller to claim

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exemptions to which this section applies.
(o) A use of an item purchased using an exemption certificate with a registration number issued under this section in a manner or for a purpose other than the manner or purpose that qualified the sale, lease, rental, or other consumption of the item for the exemption may result in the revocation of the number.
(p) A person eligible for a registration number who, at the time of purchasing, leasing, renting, or otherwise consuming an item for which the person may otherwise claim an exemption to which this section applies, has not obtained a registration number from the comptroller must pay the tax on the item to the seller at the time of the transaction. The person may then apply for a registration number and, on receipt of the number, may apply to the comptroller for a refund of the tax paid, subject to the statute of limitations. The comptroller by rule shall establish procedures for processing the refund requests. Tax collected by a seller under this subsection is not tax collected in error, and Section 111.104 does not apply to a refund request submitted under this subsection.

SECTION 2. 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, is reenacted and amended to read as follows:

- (a) Subject to Section 151.1551, the [The] following items are exempted from the taxes imposed by this chapter:
- (1) horses, mules, and work animals;
 - (2) animal life the products of which ordinarily constitute food for human consumption;
 - (3) feed for farm and ranch animals;
 - (4) feed for animals that are held for sale in the regular course

SECTION 3. 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, is reenacted and amended to read as follows:

- (a) Subject to Section 151.1551, the [The] following items are exempted from the taxes imposed by this chapter:
- (1) horses, mules, and work animals;
 - (2) animal life the products of which ordinarily constitute food for human consumption;
 - (3) feed for farm and ranch animals;
 - (4) feed for animals that are held for sale in the regular course

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of business;

(5) seeds and annual plants the products of which:

(A) ordinarily constitute food for human consumption;

(B) are to be sold in the regular course of business; or

(C) are used to produce feed for animals exempted by this section;

(6) fertilizers, fungicides, insecticides, herbicides, defoliant, and desiccants exclusively used or employed on a farm or ranch in the production of:

(A) food for human consumption;

(B) feed for animal life; or

(C) other agricultural products to be sold in the regular course of business;

(7) 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:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business;

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

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

(B) the producer does not process, pack, or market for consideration any agricultural products that belong to other persons in an amount greater than five percent of the total

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of business;

(5) seeds and annual plants the products of which:

(A) ordinarily constitute food for human consumption;

(B) are to be sold in the regular course of business; or

(C) are used to produce feed for animals exempted by this section;

(6) fertilizers, fungicides, insecticides, herbicides, defoliant, and desiccants exclusively used or employed on a farm or ranch in the production of:

(A) food for human consumption;

(B) feed for animal life; or

(C) other agricultural products to be sold in the regular course of business;

(7) 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:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business;

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

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

(B) the producer does not process, pack, or market for consideration any agricultural products that belong to other persons in an amount greater than five percent of the total

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agricultural products processed, packed, or marketed by the producer;

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

(10) 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 the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business;

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

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

No equivalent provision.

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agricultural products processed, packed, or marketed by the producer;

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

(10) 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 the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business;

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

(12) tangible personal property incorporated into a structure that is used for the disposal of poultry carcasses in accordance with Section 26.303, Water Code; ~~and~~

(13) tangible personal property incorporated into or attached to a structure that is located on a commercial dairy farm, is used or employed exclusively for the production of milk, and is:

(A) a free-stall dairy barn; or

(B) a dairy structure used solely for maternity purposes.

[FA1(1),(2)]

SECTION 2. Section 151.3111(a), Tax Code, is amended to

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read as follows:

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

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

(b) Subject to Section 151.1551, tangible [~~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:

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

SECTION 4. Same as House version.

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

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

- (1) seedlings of trees grown for commercial timber;
- (2) defoliants, desiccants, equipment, fertilizers, fungicides, herbicides, insecticides, and machinery exclusively used in the

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production of timber to be sold in the regular course of business;

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

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

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

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

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

No equivalent provision.

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

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

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);

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- (3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
- (4) use directly in exploring for, producing, or transporting, a material extracted from the earth;
- (5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;
- (6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;
- (7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;
- (8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;
- (9) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or
- (10) use in timber operations, including pumping for irrigation of timberland.

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

(a-1) In addition to the other requirements prescribed by this section, the exemption provided by Subsection (a) applies only if the person purchasing or using the machine, trailer, or semitrailer provides an exemption certificate with an

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

(b-1) In addition to the other requirements prescribed by this section, **to claim** an exemption provided by Subsection (a) **or** **(b)** the person purchasing, using, **or leasing** the machine, trailer, or semitrailer must provide an exemption certificate

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exemption number issued to the purchaser or user under Section 151.1551.

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

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

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

(2) 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:

(A) the identification of the motor vehicle;

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

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

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

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

(ii) timber operations.

(3) If a motor vehicle for which the tax has not been paid ceases to be leased for use primarily for farming and ranching, including the rearing of poultry, and use in feedlots or timber operations, the owner shall notify the comptroller on a form provided by the comptroller and shall pay the sales or use tax on the motor vehicle based on the owner's book value of the motor vehicle. The tax is imposed at the same percentage rate that is provided by Section 152.021(b).

(c) The taxes imposed by this chapter do not apply to the rental of a farm machine, a trailer, or a semitrailer for use primarily for farming and ranching, including the rearing of

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with a registration number issued by the comptroller under Section 151.1551.

(c) The taxes imposed by this chapter do not apply to the rental of a farm machine, a trailer, or a semitrailer for use primarily for farming and ranching, including the rearing of

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poultry, and use in feedlots, or a machine, a trailer, or a semitrailer for use primarily for timber operations. The tax that would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts imposed by Section 152.026. 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. 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 of public accounts to qualify for an exemption under Section 151.316, 151.3162, or 152.091, Tax Code, that is claimed before January 1, 2012.

SECTION 7.
The change in law made by this Act does not affect tax liability accruing before January 1, 2012. 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.

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poultry, and use in feedlots, or a machine, a trailer, or a semitrailer for use primarily for timber operations. The tax that would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts imposed by Section 152.026. 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. To claim the exemption, the person renting the vehicle must also provide on the certificate a registration number issued by the comptroller under Section 151.1551.

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

SECTION 9. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act does not affect tax liability accruing before January 1, 2012. 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.
(b) Section 151.316(a)(13), Tax Code, as added by this Act, does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if that section

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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. [FA1(3),(4)]

SECTION 8. 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 10. Same as House version.

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

SECTION 11. Same as House version.