

BILL ANALYSIS

C.S.H.B. 3169
By: Bohac
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties identify destination management companies, or professional services companies specializing in the design and implementation of events, activities, tours, transportation, and program logistics, as instrumental to the meetings and conventions industry in Texas. According to the parties, these companies regularly market Texas as a destination to their corporate clients, a task that uses a considerable amount of their marketing budgets and results in millions of dollars being spent in Texas.

The parties observe that recent legislation allowed destination management companies to exclude from their taxable income payments made to vendors, as it relates to the sales and use tax, and clarified that the companies are the consumers of taxable items and do not collect and remit sales tax.

C.S.H.B. 3169 seeks to clarify certain elements of that legislation as it relates to the imposition of sales and use tax on taxable items sold or provided under destination management services contracts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3169 amends the Tax Code to redefine "destination management services," for purposes of provisions excluding such services from consideration as taxable services with regard to the sales and use tax, by specifying that transportation management is transportation vehicle management and by including among such services transportation staffing; shuttle system services, including vehicle staging, radio communications, signage, and routing services; and airport meet-and-greet services, including the provision of airport permits, manifest management services, portage, and passenger greeting services.

C.S.H.B. 3169 redefines "qualified destination management company" as follows:

- by replacing the condition that the business entity spend at least one percent of the entity's gross receipts to market the destinations with respect to which destination management services are provided with the condition that the entity maintain a general liability insurance policy with a limit of a least \$1 million
- by replacing the condition that the business entity not be doing business as a caterer with the condition that the entity not prepare or serve beverages, meals, or other food products, but may procure catering services on behalf of the entity's clients
- by adding the condition that the entity not operate a venue at which events or activities for which destination management services are provided occur

- by removing the condition that the business entity not be a subsidiary of another entity that, and is not a member of an affiliated group, another member of which is doing business as, or owns or operates another entity doing business as, a caterer or another member of which owns or operates a venue, and substituting the condition that the entity not be a member of an affiliated group another member of which prepares or serves beverages, meals, or other food products or owns or operates a venue
- with regard to the condition that the entity have at least 80 percent of the entity's clients located outside the state, by removing a descriptor limiting such clients to those referenced in the definition of "qualified destination management services contract."

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3169 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 151.0565, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) In this section:

(1) "Destination management services" means the following services ~~when provided under a qualified destination management services contract~~:

- (A) transportation management;
- (B) booking and managing entertainers;
- (C) coordination of tours or recreational activities;
- (D) meeting, conference, or event registration;
- (E) meeting, conference, or event staffing;
- (F) event ~~or logistics~~ management; and
- (G) meal coordination.

(2) "Qualified destination management company" means a business entity that:

- (A) is incorporated or is a limited liability company;
- (B) receives at least 80 percent of the entity's annual total revenue from providing

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 151.0565(a)(1) and (2), Tax Code, are amended to read as follows:

(1) "Destination management services" means the following services ~~when provided under a qualified destination management services contract~~:

- (A) transportation ~~vehicle~~ management;
- (B) booking and managing entertainers;
- (C) coordination of tours or recreational activities;
- (D) meeting, conference, or event registration;
- (E) meeting, conference, ~~transportation~~, or event staffing;
- (F) event management; ~~and~~
- (G) meal coordination;
- (H) shuttle system services, including vehicle staging, radio communications, signage, and routing services; and
- (I) airport meet-and-greet services, including the provision of airport permits, manifest management services, portage, and passenger greeting services.

(2) "Qualified destination management company" means a business entity that:

- (A) is incorporated or is a limited liability company;
- (B) receives at least 80 percent of the entity's annual total revenue from providing or

or arranging for the provision of destination management services;

(C) maintains a permanent nonresidential office from which the destination management services are provided or arranged;

(D) has at least three full-time employees;

(E) spends at least one percent of the entity's annual gross receipts to market the destinations with respect to which destination management services are provided, including gross receipts spent for labor expenses relating to that activity;

(F) has at least 80 percent of the entity's clients described by Subdivision (3)(A) located outside this state;

(G) other than office equipment used in the conduct of the entity's business, does not own equipment used to directly provide destination management services, including motor coaches, limousines, sedans, dance floors, decorative props, lighting, podiums, sound or video equipment, or equipment for catered meals;

(H) is not doing business as a caterer;

(I) does not provide services for weddings;

(J) does not own a venue at which events or activities for which destination management services are provided occur; and

(K) is not a subsidiary of another entity that, and is not a member of an affiliated group, as that term is defined by Section 171.0001, another member of which:

(i) is doing business as, or owns or operates another entity doing business as, a caterer; or

(ii) owns or operates a venue described by Paragraph (J).

(3) "Qualified destination management services contract" means a contract under which at least three of the destination management services listed in Subdivision (1) are provided:

(A) in this state to a client that is not an individual and that:

(i) is a corporation, partnership, limited liability company, trade association, or other business entity, other than a social

arranging for the provision of destination management services;

(C) maintains a permanent nonresidential office from which the destination management services are provided or arranged;

(D) has at least three full-time employees;

(E) maintains a general liability insurance policy with a limit of at least \$1 million [spends at least one percent of the entity's annual gross receipts to market the destinations with respect to which destination management services are provided];

(F) has at least 80 percent of the entity's clients [described by Subdivision (3)(A)] located outside this state;

(G) other than office equipment used in the conduct of the entity's business, does not own equipment used to directly provide destination management services, including motor coaches, limousines, sedans, dance floors, decorative props, lighting, podiums, sound or video equipment, or equipment for catered meals;

(H) does not prepare or serve beverages, meals, or other food products, but may procure catering services on behalf of the entity's clients [is not doing business as a caterer];

(I) does not provide services for weddings;

(J) does not own or operate a venue at which events or activities for which destination management services are provided occur; and

(K) [is not a subsidiary of another entity that, and] is not a member of an affiliated group, as that term is defined by Section 171.0001, another member of which:

(i) prepares or serves beverages, meals, or other food products [is doing business as, or owns or operates another entity doing business as, a caterer]; or

(ii) owns or operates a venue described by Paragraph (J).

club or fraternal organization;

(ii) has its principal place of business outside the county where the destination management services are to be provided; and

(iii) agrees to pay the qualified destination management company for all destination management services provided to the client under the terms of the contract; and

(B) by a qualified destination management company that pays or accrues liability for the payment of taxes imposed by this chapter on purchases of taxable items that will be consumed or used by the company in performing the contract.

(b) A qualified destination management company is the consumer of taxable items sold or otherwise provided under a qualified destination management services contract, and the destination management services provided under the contract are not considered taxable services, as that term is defined by section 151.0101.

(c) For purposes of this section, the following activities are considered as marketing a destination:

(1) promoting the destination for prospective meeting, incentive, and convention clients, regardless of whether the activity promotes the entity engaging in the activity and including the following activities:

(A) participating in trade shows;

(B) making sales calls;

(C) conducting site inspections;

(D) participating in familiarization trips; and

(E) marketing license and/or membership fees;

(2) attending or sponsoring an industry conference while marketing the destination;

(3) creating a destination proposal with respect to the destination;

(4) disseminating gifts or other materials that promote the destination; and

(5) promoting the destination by electronic means.

SECTION 2. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. 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

SECTION 2. Same as introduced version.

criminal enforcement of the liability for those taxes.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.