

BILL ANALYSIS

C.S.H.B. 3484
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have raised various issues of concern with regard to the application of sales and use taxes to certain food items. C.S.H.B. 3484 seeks to address those issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 3484 amends the Tax Code to limit the items that are considered snack items for purposes of the sales and use tax exemption for certain food products to the items that are specifically included in the statutory definition of "snack items." The bill includes as snack items pork rinds and corn nuts; sunflower seeds and pumpkin seeds; ice cream, sherbet, and frozen yogurt; and ice pops, juice pops, sorbet, and other frozen fruit items containing not more than 50 percent fruit juice by volume. The bill excludes pine nuts as a snack item.

C.S.H.B. 3484 removes language specifying that the tax exemption does not apply to food, food products, and drinks served, prepared, or sold ready for immediate consumption in restaurants, lunch counters, cafeterias, vending machines, hotels, or like places of business but maintains the exclusion from the exemption of food, food products, and drinks served, prepared, or sold ready for immediate consumption by such places of business and further excludes from the exemption food, food products, and drinks served, prepared, or sold ready for immediate consumption by delis. The bill establishes that, for purposes of the exclusion of such food, food products, and drinks from the exemption, if a grocery store or convenience store contains a type of location like those places of business, the store is considered a like place of business but only in relation to items sold at that location. The bill specifies that the exclusion from the exemption of prepared food consisting of two or more food ingredients mixed or combined by the seller for sale as a single item applies regardless of where the item is prepared. The bill, for purposes of the exclusion from the exemption of snack items sold in individual-sized portions, removes language conditioning a portion being individual-sized if it contains less than 2.5 ounces on the number of servings not being specified on the package.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3484 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 151, Tax Code, is amended by adding Section 151.0037 to read as follows:

Sec. 151.0037. "INCIDENTAL." "Incidental" means to be subordinate to, or to be a minor accompaniment to, another thing.

SECTION 2. Section 151.0101(a), Tax Code, is amended to read as follows:

(a) "Taxable services" means:

- (1) amusement services;
- (2) cable television services;
- (3) personal services;
- (4) motor vehicle parking and storage services;
- (5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:
 - (A) aircraft;
 - (B) a ship, boat, or other vessel, other than:
 - (i) a taxable boat or motor as defined by Section 160.001;
 - (ii) a sports fishing boat; or
 - (iii) any other vessel used for pleasure;
 - (C) the repair, maintenance, and restoration of a motor vehicle; and
 - (D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service;
- (6) telecommunications services;
- (7) credit reporting services;
- (8) debt collection services;
- (9) insurance services;
- (10) information services;
- (11) real property services;
- (12) data processing services;
- (13) real property repair and remodeling;
- (14) security services;
- (15) telephone answering services;
- (16) Internet access service; ~~and~~
- (17) a sale by a transmission and distribution utility, as defined in Section 31.002, Utilities Code, of transmission or delivery of service directly to an electricity end-use customer whose consumption of electricity is subject to taxation under this chapter; and

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

No equivalent provision.

(18) ticket scalping.

SECTION 3. Section 151.051(b), Tax Code, is amended to read as follows:

(b) The sales tax rate is 6.24 [~~6-1/4~~] percent of the sales price of the taxable item sold.

SECTION 4. Section 151.202, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) An application that is filed electronically complies with the signature requirement under Subsection (b).

SECTION 5. Section 151.359(j), Tax Code, is repealed.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 1. Section 151.314, Tax Code, is amended by amending Subsections (b-1), (c-2), and (h) and adding Subsection (c-4) to read as follows:

(b-1) For purposes of this section, "snack items" means [~~includes~~]:

(1) breakfast bars, granola bars, nutrition bars, sports bars, protein bars, or yogurt bars, unless labeled and marketed as candy;

(2) snack mix or trail mix;

(3) nuts, but not including pine nuts or [~~unless~~] candy-coated nuts;

(4) popcorn; [~~and~~]

(5) chips, crackers, [~~or~~] hard pretzels, pork rinds, or corn nuts;

(6) sunflower seeds or pumpkin seeds;

(7) ice cream, sherbet, or frozen yogurt; and

(8) ice pops, juice pops, sorbet, or other frozen fruit items containing not more than 50 percent fruit juice by volume.

(c-2) The exemption provided by Subsection (a) does not include the following prepared food:

(1) food, food products, and drinks, including meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juice, and ice cream in cones or small cups, served, prepared, or sold ready for immediate consumption [~~in or~~] by restaurants, lunch counters, cafeterias, delis, vending machines, hotels, or like places of business or sold ready for immediate consumption from pushcarts, motor vehicles, or any other form of vehicle;

(2) food sold in a heated state or heated by the seller; or

(3) two or more food ingredients mixed or combined by the seller for sale as a single item, including items that are sold in an unheated state by weight or volume as a single item, regardless of where prepared, but not including food that is only cut, repackaged, or pasteurized by the seller.

(c-4) For purposes of Subdivision (c-2)(1), if a grocery store or convenience store contains a type of location listed in that subdivision, the store is considered a like place of business for purposes of that subdivision, but only in relation to items sold at that location.

(h) The exemption provided by Subsection (a) does not apply to a snack item if the item is sold through a vending machine or is sold in individual-sized portions. For purposes of this subsection, an individual-sized portion is a portion that:

(1) is labeled as having not more than one serving; or

(2) contains less than 2.5 ounces~~[, if the package does not specify the number of servings]~~.

SECTION 6. The changes in law made by this Act do 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 and enforcement of those taxes.

SECTION 7. This Act takes effect September 1, 2015.

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 criminal enforcement of the liability for those taxes.

SECTION 3. Same as introduced version.