

BILL ANALYSIS

Senate Research Center
85R14120 ADM-F

C.S.S.B. 745
By: Kolkhorst
Finance
3/27/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 745 clarifies when a host employer may claim a sales tax exemption for services provided by a temporary employee.

S.B. 745 is filed in response to litigation between the state and Allstate Insurance over when a company may properly classify someone as a temporary employee so as to obtain a tax exemption under Section 151.057, Tax Code. *Allstate Ins. Co. v. Hegar*, NO. 03-13-00341-CV (Tex.App.—Austin [3rd Dist.] February 18, 2016), filed. Many businesses rely on temporary employment and staffing agencies to supplement their regular workforce on a temporary basis. As an example, insurance carriers frequently hire limited-term, project-specific adjusters from staffing companies, most commonly in connection with large weather events.

Allstate Insurance filed claims with the Texas comptroller of public accounts (comptroller) seeking refund of some sales tax payments. The comptroller denied the carrier's refund claims in full. Allstate brought a taxpayer suit in Travis County district court and an appeals court ultimately ruled that Allstate satisfied each of the requirements of Section 151.057(2), Tax Code, with regard to a portion of its claims for refund for sales taxes paid on its purchases of the services. The court awarded Allstate a refund of \$2.3 million of the \$18.9 million in sales taxes it paid.

S.B. 745 amends the law to conform with the state's position in the lawsuit and to clarify when this exemption should apply.

S.B. 745 seeks to:

- clarify that Section 157.057(2), Tax Code, should be interpreted as an exemption, rather than a broad exclusion;
- eliminate an entity's ability to structure tax avoidance schemes by tightening the supplies/equipment language to better describe when the exemption applies;
- clarify the definition of supervision to further clarify when a temporary employment relationship has been established. (Original Author's / Sponsor's Statement Of Intent)

C.S.S.B. 745 amends current law relating to the exemption of certain services performed by certain employees from the sales and use tax.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Transfers Section 151.057, Tax Code, to Subchapter H, Chapter 151, Tax Code, redesignates it as Section 151.3503, Tax Code, and amends it, as follows:

Sec. 151.3503. SERVICES BY EMPLOYEES. (a) Creates this subsection from existing text. Provides that the following are exempted from the taxes imposed by this chapter, rather than the following services are not taxable under this chapter:

(1) makes nonsubstantive changes;

(2) a service performed by an employee of a temporary employment service, rather than of a temporary employment service as defined by Section 93.001 (Definitions), Labor Code, for a host employer to supplement the host employer's existing work force on a temporary basis, if:

(A) the service is normally performed by the host employer's own employees;

(B) the host employer provides all supplies and equipment necessary to perform the service, other than personal protective equipment provided by the temporary employment service pursuant to a federal law or regulation;

(C) the host employer does not rent, lease, purchase, or otherwise acquire for use the supplies and equipment described by Paragraph (B), other than the personal protective equipment described by that paragraph, from the temporary employment service or an entity that is a member of an affiliated group of which the temporary employment service is also a member; and

(D) the host employer has the sole right to supervise, direct, and control the work performed by the employee of the temporary employee service as necessary to conduct the host employer's business or to comply with any licensing, statutory, or regulatory requirement applicable to the host employer; or

(3) makes no changes to this subdivision.

(b) Creates this subsection from existing text. Requires the Texas comptroller of public accounts (comptroller) to prescribe, by rule, certain criteria as the comptroller may deem necessary to properly implement Subsection (a)(3), rather than this section.

(c) Defines "affiliated group," "host employer," and "temporary employment service."

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2017.