

BILL ANALYSIS

Senate Research Center
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S.B. 1539
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas comptroller of public accounts is seeking to clarify when the "sale for resale" sales tax exemption may be claimed. The sale for resale exemption is typically granted to a taxpayer who is purchasing products to be resold to the final customer, who ultimately pays the sales tax.

S.B. 1539 provides clarification to ensure that sales tax is appropriately paid by the final consumer of a taxable good or service. The bill addresses four aspects of the sale for resale exemption:

- Clarify that goods purchased to be used as prizes in certain coin-operated machines (e.g., plush toys in the Claw Game) do not qualify for the resale exemption. To do this, the coin-operated machine exemption will now be treated as an exclusion from tax. This is a codification of current practice and closes a loophole for tax avoidance.
- Correct the unintended consequences of a previous "fix" from 2011 that led to the denial of the resale exemption for items that previously had been exempt, such as a replacement part purchased to be installed in a tractor used for agricultural production (an exempt use). This would be going back to the original intent of the sale for resale exemption while also preventing the exemption from being exploited by entities contracting with government or other tax-exempt organizations.
- Codify current practice that applies the sales tax to materials used to provide a nontaxable service, such as materials used, consumed, or expended into a well by a purchaser who is performing a service to an oil and gas well. An example of this would be sand used during the fracking process.
- Clarify that the exemption applies only to the labor—not the materials—used to perform the services involved in the repair, remodeling, maintenance, or restoration of tangible personal property required by law to protect the environment or conserve energy.

As proposed, S.B. 1539 amends current law relating to the application of the sales and use tax to certain property and services.

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. Amends Section 151.0028, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Redefines "amusement services."

(c) Provides that, notwithstanding Subsection (b), "amusement services" does not include services provided through coin-operated machines that are operated by the consumer.

SECTION 2. Amends Section 151.0045, Tax Code, to redefine "personal services" to provide that the term does not include services provided through coin-operated machines that are operated by the consumer.

SECTION 3. Amends Section 151.006, Tax Code, by amending Subsections (a) and (c) and adding Subsection (e), as follows:

(a) Redefines "sale for resale."

(c) Provides that a sale for resale does not include certain sales, including the sales of certain property or service to a purchaser who acquires the property or service for the purpose of performing a contract, or a subcontract of a contract, with an entity or organization exempted from the taxes imposed by this chapter (Limited Sales, Excise, and Use Tax) under Section 151.309 (Governmental Entities) or 151.310 (Religious, Educational, and Public Service Organizations), rather than for the purpose of performing a service that is not taxed under this chapter.

(e) Provides that a sale for resale does not include the sale of tangible personal property that will be used, consumed, or expended in, or incorporated into, an oil or gas well by a purchaser who acquires the property to perform an oil well service taxable under Chapter 191 (Miscellaneous Occupations Taxes).

SECTION 4. Amends Section 151.338, Tax Code, as follows:

Sec. 151.338. ENVIRONMENT AND CONSERVATION SERVICES. (a) Provides that, subject to Subsection (b), labor to repair, remodel, maintain, or restore tangible personal property is exempted from the taxes imposed by this chapter if certain conditions are met, including that the amount of the charge for labor is separately itemized, rather than provides that the services involved in the repair, remodeling, maintenance, or restoration of tangible personal property are not taxable under this chapter if certain conditions are met.

(b) Provides that the exemption provided by this section does not apply to tangible personal property transferred by the service provider to the purchaser as part of the service.

SECTION 5. Repealer: Section 151.335 (Coin-Operated Services), Tax Code.

SECTION 6. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides that 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 7. Effective date: October 1, 2017.