

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 29, 2017

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB745 by Kolkhorst (relating to the exemption of certain services performed by certain employees from the sales and use tax.), **Committee Report 1st House, Substituted**

The extent to which future tax revenue might decline, should evolving litigation expand the applicability of the exemption for services performed by an employee for an employer to the provision of otherwise taxable services, is unknown. The clarification of statute provided by the bill could prevent a future loss of sales and use tax revenue resulting from the outcome of litigation.

The bill would amend Chapter 151 of the Tax Code, regarding sales and use taxation of certain services performed by employees.

Section 151.057 would be transferred from Subchapter C to Subchapter H and be redesignated as Section 151.3503.

Section 151.3503 provides for exemption of services performed by employees for employers. The section would be amended to add or clarify conditions that must be met if otherwise taxable services performed by an employee of a temporary employment service to a host employer (a client of the temporary employment service) are to be exempt as services performed by an employee for an employer. "Host employer" would be defined to mean the employer who owns, manages, or controls the property or worksite where an employee of a temporary employment service performs a service.

The requirement that the host employer provide all supplies and equipment necessary to perform the service would be amended to except personal protective equipment provided by a temporary employment service pursuant to a federal law or regulation, and to stipulate that the host employer does not rent, lease, purchase or otherwise acquire the necessary supplies and equipment from the temporary employment service or from a member of an affiliated group that includes the temporary employment service. "Affiliated group" would have the meaning assigned by Section 171.0001 of this code, which means a group of one or more entities with more than 50 percent ownership by a common owner or owners.

The requirement that the temporary employee be subject to the supervision of the host employer would also be modified. The requirement that the supervision be "direct or general" would be struck; instead, it would be required that the host employer has the sole right to supervise, direct, and control the employee to conduct the host employer's business or to comply with any licensing, statutory, or regulatory requirement applicable to the host employer.

The bill addresses issues that have been the subject of litigation (*Allstate Ins. Co. v. Hegar*, NO. 03-13-00341-CV). The bill would add clarity to statute regarding when services provided by a temporary employment service qualify for exemption as services provided by an employee for an employer. Absent the clarification provided by the bill, the extent to which future tax revenue might decline, should evolving litigation expand the applicability of the exemption for services performed by an employee for an employer to the provision of otherwise taxable services, is unknown.

This bill would take effect September 1, 2017.

Local Government Impact

The bill could prevent a future loss of local taxing jurisdictions sales and use tax revenue resulting from the outcome of litigation.

Source Agencies: 304 Comptroller of Public Accounts

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