

SENATE AMENDMENTS

2nd Printing

By: Murphy

H.B. No. 4054

A BILL TO BE ENTITLED

AN ACT

relating to the application of sales and use taxes to certain food items.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 151.314, Tax Code, is amended by amending Subsections (b), (c-2), and (c-3) and adding Subsection (b-2) to read as follows:

(b) "Food products" shall include, except as otherwise provided herein, but shall not be limited to cereals and cereal products; milk and milk products, including ice cream; oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; spices, condiments, and salt; sugar and sugar products; coffee and coffee substitutes; tea; cocoa products; snack items; bakery items; or any combination of the above.

(b-2) For purposes of this section:

(1) "Bakery" means a retail location that primarily sells bakery items from a display case or counter, predominantly for consumption off the premises.

(2) "Bakery items" means bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas, and similar items.

(c-2) The exemption provided by Subsection (a) does not

1 include the following prepared food:

2 (1) except as provided by Subsection (c-3)(1), food,
3 food products, and drinks, including meals, milk and milk products,
4 fruit and fruit products, sandwiches, salads, processed meats and
5 seafoods, vegetable juice, and ice cream in cones or small cups,
6 served, prepared, or sold ready for immediate consumption by
7 restaurants, lunch counters, cafeterias, delis, vending machines,
8 hotels, or like places of business or sold ready for immediate
9 consumption from pushcarts, motor vehicles, or any other form of
10 vehicle;

11 (2) except as provided by Subsection (c-3), food sold
12 in a heated state or heated by the seller; or

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

18 (c-3) The exemption provided by Subsection (a) includes:

19 (1) bakery items sold by a bakery, regardless of
20 whether heated by the consumer or seller [~~without plates or other~~
21 ~~eating utensils, including bread, rolls, buns, biscuits, bagels,~~
22 ~~croissants, pastries, doughnuts, Danish, cakes, tortes, pies,~~
23 ~~tarts, muffins, bars, cookies, and tortillas~~]; and

24 (2) eggs, fish, meat, and poultry, and foods
25 containing these raw animal foods, that require cooking by the
26 consumer as recommended by the Food and Drug Administration in
27 Chapter 3, Section 401.11 of its Food Code to prevent food-borne

1 illness and any other food that requires cooking by the consumer
2 before the food is edible.

3 SECTION 2. The change in law made by this Act does not
4 affect tax liability accruing before the effective date of this
5 Act. That liability continues in effect as if this Act had not been
6 enacted, and the former law is continued in effect for the
7 collection of taxes due and for civil and criminal enforcement of
8 the liability for those taxes.

9 SECTION 3. This Act takes effect September 1, 2017.

ADOPTED

MAY 19 2017

Lataj Spaw
Secretary of the Senate

By: Paul Bellercont

H.B. No. 4054

Substitute the following for ___B. No. _____:

By: Nelson

C.S. H.B. No. 4054

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the application of sales and use taxes to certain food
3 items.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 151.314, Tax Code, is amended by adding
6 Subsection (b-2) and amending Subsections (c-2) and (c-3) to read
7 as follows:

8 (b-2) For purposes of this section:

9 (1) "Bakery" means a retail location that primarily
10 sells bakery items from a display case or counter, predominantly
11 for consumption off the premises.

12 (2) "Bakery items" means bread, rolls, buns, biscuits,
13 bagels, croissants, pastries, doughnuts, Danish, cakes, tortes,
14 pies, tarts, muffins, bars, cookies, tortillas, and similar items.

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

17 (1) except as provided by Subsection (c-3)(1), food,
18 food products, and drinks, including meals, milk and milk products,
19 fruit and fruit products, sandwiches, salads, processed meats and
20 seafoods, vegetable juice, and ice cream in cones or small cups,
21 served, prepared, or sold ready for immediate consumption by
22 restaurants, lunch counters, cafeterias, delis, vending machines,
23 hotels, or like places of business or sold ready for immediate
24 consumption from pushcarts, motor vehicles, or any other form of

1 vehicle;

2 (2) except as provided by Subsection (c-3)(1), food
3 sold in a heated state or heated by the seller; or

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

9 (c-3) The exemption provided by Subsection (a) includes:

10 (1) bakery items sold by a bakery, regardless of
11 whether the items are:

12 (A) heated by the consumer or seller; or

13 (B) served with plates or other eating utensils;

14 (2) bakery items sold at a retail location other than a
15 bakery without plates or other eating utensils [~~including bread,~~
16 ~~rolls, buns, biscuits, bagels, croissants, pastries, doughnuts,~~
17 ~~Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and~~
18 ~~tortillas~~]; and

19 (3) [~~2~~] eggs, fish, meat, and poultry, and foods
20 containing these raw animal foods, that require cooking by the
21 consumer as recommended by the Food and Drug Administration in
22 Chapter 3, Section 401.11 of its Food Code to prevent food-borne
23 illness and any other food that requires cooking by the consumer
24 before the food is edible.

25 SECTION 2. The change in law made by this Act does not
26 affect tax liability accruing before the effective date of this
27 Act. That liability continues in effect as if this Act had not been

1 enacted, and the former law is continued in effect for the
2 collection of taxes due and for civil and criminal enforcement of
3 the liability for those taxes.

4 SECTION 3. This Act takes effect September 1, 2017.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 20, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB4054 by Murphy (Relating to the application of sales and use taxes to certain food items.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend Section 151.314 of the Tax Code, with respect to sales taxation of certain bakery items.

A new Subsection (b-2) would be added to define "bakery" and "bakery items."

Subsection (c-3) would be amended to provide for exemption of bakery items when sold by a bakery, regardless of whether heated or unheated and regardless of whether sold with or without utensils. Under current law, a bakery item if heated or if sold with utensils would be taxable.

Explicit exemption of heated bakery items sold by a bakery with or without utensils would have no significant fiscal impact on the state, as in practice most bakeries do not distinguish between heated and unheated items when making the sales.

This bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 11, 2017

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB4054 by Murphy (relating to the application of sales and use taxes to certain food items.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend Section 151.314 of the Tax Code, with respect to sales taxation of certain bakery items.

A new Subsection (b-2) would be added to define "bakery" and "bakery items."

Subsection (c-3) would be amended to provide for exemption of bakery items when sold by a bakery, regardless of whether heated or unheated and regardless of whether sold with or without utensils. Under current law, a bakery item if heated or if sold with utensils would be taxable.

Explicit exemption of heated bakery items sold by a bakery with or without utensils would have no significant fiscal impact on the state, as in practice most bakeries do not distinguish between heated and unheated items when making the sales.

This bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 10, 2017

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB4054 by Murphy (Relating to the application of sales and use taxes to certain food items.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend Section 151.314 of the Tax Code, with respect to sales taxation of certain bakery items.

A new Subsection (b-2) would be added to define "bakery" and "bakery items."

Subsection (c-3) would be amended to provide for exemption of bakery items when sold by a bakery, regardless of whether heated or unheated and regardless of whether sold with or without utensils. Under current law, a bakery item if heated or if sold with utensils would be taxable.

Explicit exemption of heated bakery items sold by a bakery with or without utensils would have no significant fiscal impact on the state, as in practice most bakeries do not distinguish between heated and unheated items when making the sales.

This bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 10, 2017

TO: Honorable Dennis Bonnen, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB4054 by Murphy (Relating to the application of sales and use taxes to certain food items.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Section 151.314 of the Tax Code, to provide for the exemption of bakery items from the sales and use tax.

Section 151.314(c-3) would be amended to add bakery items regardless of whether the item is heated by the consumer or seller to the list of food products exempted from the sales and use tax.

Explicit exemption of heated bakery items would result in a negligible decrease in sales tax revenues, as in practice sellers of bakery items do not distinguish between heated and unheated items when making the sales.

The bill would take effect September 1, 2017.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

TAX/FEE EQUITY NOTE

85TH LEGISLATIVE REGULAR SESSION

April 10, 2017

TO: Honorable Dennis Bonnen, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB4054 by Murphy (Relating to the application of sales and use taxes to certain food items.), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: UP, KK