By:  Guillen (Senate Sponsor - Paxton) H.B. No. 2358

(In the Senate - Received from the House May 6, 2019; May 7, 2019, read first time and referred to Committee on Finance; May 13, 2019, reported favorably by the following vote: Yeas 14, Nays 0; May 13, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Nelson               X

Hinojosa             X

Bettencourt          X

Birdwell             X

Campbell             X

Flores               X

Hancock              X

Huffman              X

Kolkhorst            X

Nichols              X

Perry                X

Taylor               X

Watson               X

West                 X

Whitmire                       X

A BILL TO BE ENTITLED

AN ACT

relating to the payment of certain sales and use taxes by a retailer.

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

SECTION 1.  Section 111.016, Tax Code, is amended by adding Subsection (a-2) and amending Subsection (b) to read as follows:

(a-2)  A retailer who advertises, holds out, or states that the retailer will pay the tax as provided by Section 151.704(b) and makes a sale of a taxable item:

(1)  is presumed to have received or collected the amount of the taxes imposed by Chapter 151 on the sale or storage, use, or consumption in this state of the taxable item;

(2)  shall hold the amount described by Subdivision (1) in trust for the benefit of the state; and

(3)  is liable to the state for the amount described by Subdivision (1) plus any accrued penalties and interest on the amount.

(b)  With respect to tax or other money subject to the provisions of Subsection (a) or (a-2), an individual who controls or supervises the collection of tax or money from another person, or an individual who controls or supervises the accounting for and paying over of the tax or money, and who wilfully fails to pay or cause to be paid the tax or money is liable as a responsible individual for an amount equal to the tax or money not paid or caused to be paid. The liability imposed by this subsection is in addition to any other penalty provided by law. The dissolution of a corporation, association, limited liability company, or partnership does not affect a responsible individual's liability under this subsection.

SECTION 2.  Section 151.704, Tax Code, is amended to read as follows:

Sec. 151.704.  SALES TAX ABSORPTION [~~PROHIBITED ADVERTISING~~]; CRIMINAL PENALTY. (a) Except as provided by Subsections (b) and (c), a [~~A~~] retailer commits an offense if the retailer directly or indirectly advertises, holds out, or states to a customer or to the public that the tax is not part of the sales price payable by the customer [~~retailer:~~

[~~(1) will assume, absorb, or refund a part of the tax; or~~

[~~(2) will not add the tax to the sales price of a taxable item sold, leased, or rented~~].

(b)  A retailer may directly or indirectly advertise, hold out, or state to a customer or to the public that the retailer will pay the tax for the customer if:

(1)  the retailer indicates in the advertisement, holding out, or statement that the retailer is paying the tax for the customer;

(2)  the retailer does not indicate or imply in the advertisement, holding out, or statement that the sale is exempt or excluded from taxation; and

(3)  any purchaser's receipt or other statement given to the customer listing the sales price paid or to be paid by the customer separately states the amount of the tax and indicates that the tax will be paid by the retailer.

(c)  This section does not prohibit a utility from billing a customer in one lump-sum price including the utility sales price and the amount of the tax imposed by this chapter.

(d) [~~(c)~~]  An offense under this section is a misdemeanor punishable by a fine of not more than $500.

SECTION 3.  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 of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 4.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5.  This Act takes effect October 1, 2019.

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