

By: Guillen

H.B. No. 2358

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

1 caused to be paid. The liability imposed by this subsection is in  
2 addition to any other penalty provided by law. The dissolution of a  
3 corporation, association, limited liability company, or  
4 partnership does not affect a responsible individual's liability  
5 under this subsection.

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

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

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

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

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

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

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

27 (3) any purchaser's receipt or other statement given

1 to the customer listing the sales price paid or to be paid by the  
2 customer separately states the amount of the tax and indicates that  
3 the tax will be paid by the retailer.

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

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

9       SECTION 3. The changes in law made by this Act do not affect  
10 tax liability accruing before the effective date of this Act. That  
11 liability continues in effect as if this Act had not been enacted,  
12 and the former law is continued in effect for the collection of  
13 taxes due and for civil and criminal enforcement of the liability  
14 for those taxes.

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

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