

By: Guillen

H.B. No. 2358

Substitute the following for H.B. No. 2358:

By: Bohac

C.S.H.B. No. 2358

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the payment of certain sales and use taxes by a
3 retailer.

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

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

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

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

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

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

18 (b) With respect to tax or other money subject to the
19 provisions of Subsection (a) or (a-2), an individual who controls
20 or supervises the collection of tax or money from another person, or
21 an individual who controls or supervises the accounting for and
22 paying over of the tax or money, and who wilfully fails to pay or
23 cause to be paid the tax or money is liable as a responsible
24 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.