

BILL ANALYSIS

C.S.H.B. 4052
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, recent litigation has prompted the need for clarification as to when a host employer may claim a sales and use tax exemption for certain services provided by certain temporary employees. C.S.H.B. 4052 seeks to provide that clarification.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4052 amends the Tax Code to revise the sales and use tax exemption for a service performed by an employee of a temporary employment service for a certain employer to supplement the employer's existing work force on a temporary basis under certain conditions as follows:

- the bill clarifies that the employer is a host employer, which the bill defines, among other terms, as the employer who owns, manages, or controls the property or worksite where an employee of a temporary employment service performs a service;
- the bill specifies that, with regard to the condition that the employer provides all supplies and equipment necessary, the supplies and equipment are those necessary to perform the service, other than personal protective equipment provided by the temporary employment service pursuant to a federal law or regulation;
- the bill includes as conditions for the exemption the conditions that the host employer does not rent, lease, purchase, or otherwise acquire for use such supplies and equipment necessary to perform the service from the temporary employment service or an entity that is a member of an affiliated group of which the temporary employment service is also a member, and the condition that the host employer has the sole right to supervise, direct, and control the work performed by the employee of the temporary employment service as necessary to conduct the host employer's business or to comply with any licensing, statutory, or regulatory requirement applicable to the host employer; and
- the bill removes the condition that the help is under the direct or general supervision of the employer to whom the help is furnished.

The bill limits the applicability of the requirement that the comptroller of public accounts prescribe by rule certain criteria the comptroller deems necessary to properly implement provisions relating to the taxability of certain employee services to a service performed by

covered employees of a professional employer organization for a client under a written contract that provides for shared employment responsibilities between the professional employer organization and the client for the covered employees, most of whom must have been previously employed by the client.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4052 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 151.057, Tax Code, is transferred to Subchapter H, Chapter 151, Tax Code, redesignated as Section 151.3503, Tax Code, and amended to read as follows:

Sec. 151.3503 [~~151.057~~]. SERVICES BY EMPLOYEES. (a) The following [~~services~~] are exempted from the taxes imposed by [~~not taxable under~~] this chapter:

(1) a service performed by an employee for the employee's [~~his~~] employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid [~~his~~] regular wages or salary;

(2) a service performed by an employee of a temporary employment service [~~as defined by Section 93.001, Labor Code,~~] for an employer to supplement the employer's existing work force on a temporary basis, if:

(A) [~~when~~] the service is normally performed by the employer's own employees;

(B) [-] the employer provides all supplies and equipment necessary to perform the service;

(C) the employer does not rent, lease, purchase, or otherwise acquire for use the supplies and equipment described by Paragraph (B) from the temporary employment service or an entity that is a member of an affiliated group of which the temporary employment service is also a member;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 151.057, Tax Code, is transferred to Subchapter H, Chapter 151, Tax Code, redesignated as Section 151.3503, Tax Code, and amended to read as follows:

Sec. 151.3503 [~~151.057~~]. SERVICES BY EMPLOYEES. (a) The following [~~services~~] are exempted from the taxes imposed by [~~not taxable under~~] this chapter:

(1) a service performed by an employee for the employee's [~~his~~] employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid [~~his~~] regular wages or salary;

(2) a service performed by an employee of a temporary employment service [~~as defined by Section 93.001, Labor Code,~~] for a host [~~an~~] employer to supplement the host employer's existing work force on a temporary basis, if:

(A) [~~when~~] the service is normally performed by the host employer's own employees;

(B) [-] the host employer provides all supplies and equipment necessary to perform the service, other than personal protective equipment provided by the temporary employment service pursuant to a federal law or regulation;

(C) the host employer does not rent, lease, purchase, or otherwise acquire for use the supplies and equipment described by Paragraph (B), other than the personal protective equipment described by that paragraph, from the temporary employment service or an entity that is a member of an affiliated group of which the temporary

(D) the temporary employment service is not a member of the employer's affiliated group; and

(E) ~~and~~ the employee of the temporary employment service ~~help~~ is under the ~~direct or general~~ supervision of the employer to whom the employee of the temporary employment service ~~help~~ is furnished; or

(Also see subsection (c) below)

(3) a service performed by covered employees of a professional employer organization, either licensed under Chapter 91, Labor Code, or exempt from the licensing requirements of that chapter, for a client under a written contract that provides for shared employment responsibilities between the professional employer organization and the client for the covered employees, most of whom must have been previously employed by the client.

(b) The comptroller shall prescribe by rule the minimum percentage of covered employees that must have been previously employed by the client, the minimum time period the covered employees must have been employed by the client prior to the commencement of its contract, and such other criteria as the comptroller may deem necessary to properly implement Subsection (a)(3) ~~[this section]~~.

(c) For purposes of this section, an employee of a temporary employment service is under the supervision of an employer if the employer has the sole right to direct and control the employee as necessary to conduct the employer's business or to comply with any licensing, statutory, or regulatory requirement applicable to the employer.

(d) In this section:

(1) "Affiliated group" has the meaning assigned by Section 171.0001.

employment service is also a member; ~~;~~
and

(D) the host employer has the sole right to supervise, direct, and control the work performed by the employee of the temporary employment service as necessary to conduct the host employer's business or to comply with any licensing, statutory, or regulatory requirement applicable to the host ~~help is under the direct or general supervision of the~~ employer ~~[to whom the help is furnished]~~; or

(3) a service performed by covered employees of a professional employer organization, either licensed under Chapter 91, Labor Code, or exempt from the licensing requirements of that chapter, for a client under a written contract that provides for shared employment responsibilities between the professional employer organization and the client for the covered employees, most of whom must have been previously employed by the client.

(b) The comptroller shall prescribe by rule the minimum percentage of covered employees that must have been previously employed by the client, the minimum time period the covered employees must have been employed by the client prior to the commencement of its contract, and such other criteria as the comptroller may deem necessary to properly implement Subsection (a)(3) ~~[this section]~~.

(See subsection (a)(2)(D) above.)

(c) In this section:

(1) "Affiliated group" has the meaning assigned by Section 171.0001.

(2) "Host employer" means the employer who owns, manages, or controls the property or worksite where an employee of a temporary employment service performs a

(2) "Temporary employment service" has the meaning assigned by Section 93.001, Labor Code.

SECTION 2. The changes in law made by this Act apply only to a service commenced on or after the effective date of this Act. A service commenced before that date is governed by the law in effect on the date the service was commenced, and the former law is continued in effect for that purpose.

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

service.

(3) "Temporary employment service" has the meaning assigned by Section 93.001, Labor Code.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.