

BILL ANALYSIS

C.S.S.B. 1539
By: Watson
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that the comptroller of public accounts is seeking to clarify when the tax exemption for a sale for resale may be claimed. C.S.S.B. 1539 seeks to provide such clarification as it relates to the application of the sales and use tax to certain property and services to ensure that sales and use tax is appropriately paid.

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.S.B. 1539 repeals the Tax Code provision exempting amusement and personal services provided through coin-operated machines that are operated by the consumer from sales and use tax and amends the Tax Code to subject the purchase of an admission to an amusement service through the use of a coin-operated machine to sales and use tax but not services provided through coin-operated machines that are operated by the consumer.

C.S.S.B. 1539 revises the definition of "sale for resale" in the context of the sales and use tax by, among other changes, including in the definition a sale of tangible personal property to a purchaser who acquires the property for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, with any entity or organization exempted from sales and use tax as an eligible governmental entity or religious, educational, or public service organization under certain circumstances.

C.S.S.B. 1539 excludes from consideration as a sale for resale the sale of tangible personal property to a purchaser who acquires the property for the purpose of using, consuming, or expending it in, or incorporating it into, an oil or gas well in the performance of an oil well service taxable under applicable law.

C.S.S.B. 1539 changes the applicability of the sales and use tax exemption for certain environment and conservation services from the services involved in the repair, remodeling, maintenance, or restoration of tangible personal property if the repair, remodeling, maintenance, or restoration is required by statute, ordinance, order, rule, or regulation to protect the environment or to conserve energy to the labor to repair, remodel, maintain, or restore such tangible personal property under the same condition. The bill further conditions the exemption on the amount of the charge for labor being separately itemized, except that if the purchaser is a

health care facility or an oncology center, or if the purchase is made on behalf of an oncology center, and the amount of the charge for labor is not separately itemized, the bill exempts from sales and use tax 65 percent of the total lump-sum charge for labor and tangible personal property transferred by the service provider to the purchaser for the repair, remodeling, maintenance, or restoration of tangible personal property if the repair, remodeling, maintenance, or restoration is required to protect the environment or to conserve energy. The bill makes the exemption for certain environment and conservation services inapplicable to tangible personal property transferred by the service provider to the purchaser as part of the service.

C.S.S.B. 1539 repeals Section 151.335, Tax Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1539 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 151.0028, Tax Code, is amended.

SECTION 2. Section 151.0045, Tax Code, is amended.

SECTION 3. Section 151.006, Tax Code, is amended.

SECTION 4. Section 151.338, Tax Code, is amended to read as follows:

Sec. 151.338. ENVIRONMENT AND CONSERVATION SERVICES. (a) Subject to Subsection (b), labor to [The services involved in the] repair, remodel, maintain, or restore [remodeling, maintenance, or restoration of] tangible personal property is exempted from the taxes imposed by [are not taxable under] this chapter if:

(1) the amount of the charge for labor is separately itemized; and

(2) the repair, remodeling, maintenance, or restoration is required by statute, ordinance, order, rule, or regulation of any commission, agency, court, or political, governmental, or quasi-governmental entity in order to protect the environment or to conserve energy.

(b) The exemption provided by this section does not apply to tangible personal property transferred by the service provider to the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Section 151.338, Tax Code, is amended to read as follows:

Sec. 151.338. ENVIRONMENT AND CONSERVATION SERVICES. (a) Subject to Subsections (b) and (c), labor to [The services involved in the] repair, remodel, maintain, or restore [remodeling, maintenance, or restoration of] tangible personal property is exempted from the taxes imposed by [are not taxable under] this chapter if:

(1) the amount of the charge for labor is separately itemized; and

(2) the repair, remodeling, maintenance, or restoration is required by statute, ordinance, order, rule, or regulation of any commission, agency, court, or political, governmental, or quasi-governmental entity in order to protect the environment or to conserve energy.

(b) Except as provided by Subsection (c), the exemption provided by this section does not apply to tangible personal property

purchaser as part of the service.

transferred by the service provider to the purchaser as part of the service.

(c) If the purchaser is a health care facility, as defined by Section 108.002, Health and Safety Code, or an oncology center, or if the purchase is made on behalf of an oncology center, and the amount of the charge for labor is not separately itemized as required by Subsection (a)(1), there is exempted from the taxes imposed by this chapter 65 percent of the total lump-sum charge for labor and tangible personal property transferred by the service provider to the purchaser for the repair, remodeling, maintenance, or restoration of tangible personal property if the repair, remodeling, maintenance, or restoration is required under the circumstances described by Subsection (a)(2).

SECTION 5. Section 151.335, Tax Code, is repealed.

SECTION 5. Same as engrossed version.

SECTION 6. The amendments made by this Act are a clarification of existing law and do not imply that existing law may be construed as inconsistent with the law as amended by this Act.

SECTION 6. Same as engrossed version.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 7. Same as engrossed version.