

BILL ANALYSIS

Senate Research Center
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DIGEST AND PURPOSE

Currently, tax laws vary from state to state and even among local governments within the same state. Some states require consumers to pay use taxes on items they purchase outside of the state, but use in the state. States have no means of enforcing these use laws for individual consumers. As proposed, S.B. 823 updates sales and use tax laws to be in compliance with the streamlined sales tax model act. This bill also changes the sourcing rule for municipalities from origin to destination, updates the sales tax holiday provision, and complies with governance provisions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 (Section 142.0055, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 142.002, Tax Code, by amending Subdivisions (1), (2), (3), (4), and (6) and adding Subdivisions (3-a), (3-b), and (3-c), to redefine “agreement,” “certified automated system,” “certified service product,” “sales tax,” and “use tax” and define “Model 1 seller,” “Model 2 seller,” and “Model 3 seller.”

SECTION 2. Amends Section 142.005, Tax Code, by adding Subsection (c), to authorize the comptroller of public accounts (comptroller) to enter into the Streamlined Sales and Use Tax Agreement (agreement) on behalf of this state if certain officials unanimously agree that it would be in the state’s best interest to be a signatory to the agreement.

SECTION 3. Amends Chapter 142, Tax Code, by adding Section 142.0055, as follows:

Sec. 142.0055. RULES. Authorizes the comptroller to adopt rules relating to the administration and collection of the sales and use tax as necessary to comply with the agreement, including rules establishing the requirements for a seller to be a Model 1 seller, Model 2 seller, or Model 3 seller.

SECTION 4. Amends Chapter 142, Tax Code, by adding Section 142.011, as follows:

Sec. 142.011. SETTLEMENT OF TAX, PENALTY, AND INTEREST. Authorizes the comptroller to settle a claim for tax, penalty, or interest on tax imposed by Chapter 151 if necessary for the comptroller to comply with the terms of the agreement, on or after the later of the date on which the agreement takes effect as provided by the terms of the agreement or this state becomes a signatory to the agreement.

SECTION 5. Amends Subchapter A, Chapter 151, Tax Code, by adding Section 151.012, as follows:

Sec. 151.012. EFFECTIVE DATE OF TAX RATE CHANGES. (a) Requires a change in the rate of the tax imposed under Sections 151.051 and 151.101 to take effect on the first day of a calendar quarter.

(b) Provides that if the performance of a taxable service begins before the

effective date of a change in the tax rate and the performance will not be completed until after that effective date, the change in the tax rate applies to the first billing period for the services performed on or after that effective date.

SECTION 6. Amends Section 151.103, Tax Code, by adding Subsection (d), to require a retailer who holds a sales tax permit issued by the comptroller under this chapter to collect any applicable local use tax that is due from a purchaser even if the retailer is not engaged in business in the local jurisdiction into which the taxable item is shipped or delivered.

SECTION 7. Amends Section 151.152(b), Tax Code, to require a resale certificate to be signed by the purchaser or contain an electronic form of the purchaser's signature authorized by the comptroller and contain the purchaser's name and address.

SECTION 8. Amends Section 151.202, Tax Code, by adding Subsection (c), to require a person desiring to be a seller in this state to agree to collect any applicable local use tax that may be imposed by a local jurisdiction even if the seller is not engaged in business in the local jurisdiction into which the taxable item is shipped or delivered.

SECTION 9. Amends Section 151.314, Tax Code, by amending Subsections (c), (e), (f), and (g) and adding Subsections (c-1), (c-2), and (c-3), as follows:

(c) Includes drugs, dietary supplements, and carbonated and noncarbonated packaged soft drinks, which are nonalcoholic beverages that contain natural or artificial sweeteners, ice, and candy to the list of items not included in the definitions of "food product." Deletes existing text relating to diluted juices and certain foods and drinks sold for immediate consumption. Makes nonsubstantive changes.

(c-1) Provides that diluted juice that is more than 50 percent vegetable or fruit juice by volume is not considered to be a soft drink, for purposes of this section.

(c-2) Provides that the exemption provided by Subsection (a) does not include certain prepared food.

(c-3) Provides that the exemption provided by Subsection (a) includes certain foods.

(e) Provides that soft drinks, rather than carbonated beverages and diluted juices, are exempted from the taxes imposed by this chapter if sold under certain conditions.

(f) Provides that the exemption provided by this section, rather than Subsections (a), (b), and (c) of this section, does not apply to the sale of food products through the use or operation of a vending machine for which the receipts or sales prices are determined by, rather than price for which are taxed subject to, Section 151.007(d). Deletes existing text relating to this section not applying to the sale of edible products for human consumption.

(g) Makes a conforming change.

SECTION 10. Amends Section 151.317(a), Tax Code, to provide that gas and electricity are exempted from the taxes imposed by this chapter when sold for certain uses, other than preparation or storage of prepared food described by Section 151.314(d), rather than food for immediate consumption. Makes a conforming change.

SECTION 11. Amends Section 151.317(c), Tax Code, as amended by Chapters 631 and 1467, Acts of the 76th Legislature, Regular Session, 1999, is reenacted to define "residential use."

SECTION 12. Amends Section 321.003, Tax Code, to make a conforming change.

SECTION 13. Amends Section 321.203, Tax Code, by amending Subsections (a), (b), (e), and (g) and adding Subsections (e-1), (e-2), (g-1), (g-2), and (g-3) and (1), as follows:

(a) Provides that a sale is consummated where possession or delivery occurs, rather than transfer of title. Deletes existing text related to a sale being consummated as provided by this section regardless of the place.

(b) Provides that if the purchaser takes possession of tangible personal property or makes first use of taxable services at the retailer's place of business in the state, the sale is, rather than all of the retailer's retail sales are, consummated at that place of business, except as provided by Subsection (1). Deletes existing text relating to if the retailer has only one place of business and relating to an exception provided by Subsection (e).

(e) Provides that if the purchaser does not take possession of tangible personal property or make first use of a taxable service at the retailer's place of business, the sale is consummated at the location in this state to which the tangible property, rather than a taxable item, is shipped or delivered or at the location in this state at which the taxable service is first used, except as provided by Subsection (1). Deletes existing text relating to a sale being consummated at the location in this state to which certain other conditions apply.

(e-1) Provides that if Subsections (b) and (e) do not apply, the sale is consummated at the location indicated by an address of the purchaser that is available from the retailer's business records that are maintained in the ordinary course of the retailer's business, if use of this address does not constitute bad faith, except as provided by Subsection (1). Provides that if the retailer does not have an address in the retailer's business records for the purchaser and another address is not available, the sale is consummated at the location indicated by an address for the purchaser obtained by the retailer at the time of the transaction, including a billing address.

(e-2) Provides that if Subsections (b), (e), and (e-1) do not apply, the sale is consummated at the retailer's place of business from which the taxable item is delivered or shipped, except as provided by Subsection (1).

(g) Deletes existing text relating to the of the consummation of the sale of telecommunications services.

(g-1) Provides that the sale of telecommunications services sold based on a price that is measured by individual calls is consummated at the location where the call originates and terminates or the location where the call either originates or terminates and at which the service address is also located.

(g-2) Provides that the sale of telecommunications services sold on a basis other than on a call-by-call basis is consummated at the location of the customer's place of primary use, except as provided by Subsection (g-3). Defines "place of primary use."

(g-3) Provides that a sale of post-paid calling services is consummated at the location of the original point of the telecommunications signal as first identified by the seller's telecommunications system or by information received by the seller from the seller's service provider if the system used to transport the signal is not that of the seller.

(1) Provides that a lease or rental of tangible personal property other than transportation property that requires recurring periodic payments is consummated as provided by this subsection. Provides that the first periodic payment is consummated at the location prescribed by Subsection (b), (e), (e-1), or (e-2), as applicable. Provides that periodic payments made subsequent to the first payment are consummated at the primary property location in this state. Defines "primary property location" and "transportation property."

SECTION 14. Amends Section 323.003, Tax Code, to make a conforming change.

SECTION 15. Amends Section 323.203, Tax Code, by amending Subsections (a), (b), (e), and (g) and adding Subsections (e-1), (e-2), (g-1), (g-2), and (g-3) and (1), as follows:

(a) Provides that a sale is consummated where possession or delivery occurs, rather than transfer of title. Deletes existing text related to a sale being consummated as provided by this section regardless of the place.

(b) Provides that if the purchaser takes possession of tangible personal property or makes first use of taxable services at the retailer's place of business in the state, the sale is, rather than all of the retailer's retail sales are, consummated at that place of business, except as provided by Subsection (1). Deletes existing text relating to if the retailer has only one place of business and relating to an exception provided by Subsection (e).

(e) Provides that if the purchaser does not take possession of tangible personal property or make first use of a taxable service at the retailer's place of business, the sale is consummated at the location in this state to which the tangible property, rather than a taxable item, is shipped or delivered or at the location in this state at which the taxable service is first used, except as provided by Subsection (1). Deletes existing text relating to a sale being consummated at the location in this state to which certain other conditions apply.

(e-1) Provides that if Subsections (b) and (e) do not apply, the sale is consummated at the location indicated by an address of the purchaser that is available from the retailer's business records that are maintained in the ordinary course of the retailer's business, if use of this address does not constitute bad faith, except as provided by Subsection (1). Provides that if the retailer does not have an address in the retailer's business records for the purchaser and another address is not available, the sale is consummated at the location indicated by an address for the purchaser obtained by the retailer at the time of the transaction, including a billing address.

(e-2) Provides that if Subsections (b), (e), and (e-1) do not apply, the sale is consummated at the retailer's place of business from which the taxable item is delivered or shipped, except as provided by Subsection (1).

(g) Deletes existing text relating to the of the consummation of the sale of telecommunications services.

(g-1) Provides that the sale of telecommunications services sold based on a price that is measured by individual calls is consummated at the location where the call originates and terminates or the location where the call either originates or terminates and at which the service address is also located.

(g-2) Provides that the sale of telecommunications services sold on a basis other than on a call-by-call basis is consummated at the location of the customer's place of primary use, except as provided by Subsection (g-3). Defines "place of primary use."

(g-3) Provides that a sale of post-paid calling services is consummated at the location of the original point of the telecommunications signal as first identified by the seller's telecommunications system or by information received by the seller from the seller's service provider if the system used to transport the signal is not that of the seller.

(1) Provides that a lease or rental of tangible personal property other than transportation property that requires recurring periodic payments is consummated as provided by this subsection. Provides that the first periodic payment is consummated at the location prescribed by Subsection (b), (e), (e-1), or (e-2), as applicable. Provides that periodic payments made subsequent to the first payment are consummated at the primary property location in this state. Defines "primary property location" and "transportation property."

SECTION 16. Repealer: Sections 151.326(c), 321.203(c) and (d), 323.203(c) and (d), and Chapter 326, Tax Code.

SECTION 17. (a) Effective date: October 1, 2003, except as provided by Subsection (b) of this

section.

(b) Provides that Sections 151.103(d) and 151.202(c), Tax Code, as added by this Act, and Sections 321.203 and 323.203, Tax Code, as amended by this Act, take effect July 1, 2004.

(c) Makes application of this Act prospective.