

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 268
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Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 268 amends current law relating to the exemption from sales and use taxes, including the motor vehicle sales and use tax, for timber and certain items used in or on a farm, ranch, timber operation, or agricultural aircraft operation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 151.1551, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 151, Tax Code, by adding Section 151.1551, as follows:

Sec. 151.1551. REGISTRATION NUMBER REQUIRED FOR TIMBER AND CERTAIN AGRICULTURAL ITEMS. (a) Provides that this section applies to an exemption provided by:

(1) Sections 151.316(a)(6) (relating to fertilizers, fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or employed on a farm or ranch in the production of certain items), (7) (relating to machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of certain items), (8) (relating to machinery and equipment exclusively used in, and pollution control equipment required as a result of, the processing, packing, or marketing of agricultural products by an original producer at a location operated by the original producer for processing, packing, or marketing the producer's own products under certain conditions), (10) (relating to tangible personal property, including a tire, sold or used to be installed as a component part of a motor vehicle, machinery, or other equipment exclusively used or employed on a farm or ranch in a certain manner), (11) (machinery and equipment exclusively used in an agricultural aircraft operation) and (12) (relating to tangible personal property incorporated into a structure that is used for the disposal of poultry carcasses);

(2) Section 151.316(b) (relating to exempting tangible personal property sold or used to be installed as a component of an underground irrigation system from certain taxes under certain conditions) for tangible personal property used in the production of agricultural products for sale;

(3) Section 151.3162(b) (relating to exempting certain timber items from certain taxes) for tangible personal property used in the production of timber for sale;

(4) Sections 151.317(a)(5) (relating to use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation) and (10)

(relating to use in timber operations, including pumping for irrigation of timberland) for electricity used in agriculture or timber operations; and

(5) Section 151.3111 (Services on Certain Exempted Personal Property) for services performed on tangible personal property exempted under Section 151.316(a)(6), (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

(b) Requires that a registration number issued by the comptroller of public accounts (comptroller), to claim an exemption to which this section applies, be stated on the exemption certificate provided by the purchaser of the item.

(c) Provides that a person is eligible to apply for a registration number if the person is engaged in the production of agricultural products or timber for sale or in an agricultural aircraft operation as defined by 14 C.F.R. Section 137.3.

(d) Authorizes a person who is eligible to apply to the comptroller for a registration number. Requires that the application:

(1) be on a form prescribed by the comptroller;

(2) if applicable, state the types of crops, livestock, or other agricultural products that are produced for sale on the farm or ranch on which the applicant will use or employ the item or property listed under Subsection (a) or state that the item or property will be used in relation to a timber operation or an agricultural aircraft operation as defined by 14 C.F.R. 137.3;

(3) as applicable, state the name and address of the farm, ranch, timber operation, or other business owned or operated by the applicant in relation to which the applicant will use the item; and

(4) contain any other information required by the comptroller.

(e) Requires the comptroller to develop and implement a procedure by which an applicant may submit an application described by Subsection (d) electronically.

(f) Requires the comptroller by rule to establish a uniform date on which all registration numbers issued under this section must be renewed, regardless of the date on which a registration number is initially issued. Requires that the rules require registration numbers to be renewed every four years.

(g) Prohibits the comptroller from issuing a registration number that contains an individual's social security number.

(h) Authorizes the comptroller, after written notice and a hearing, to revoke the registration number issued to a person who fails to comply with this chapter or with a rule adopted under this chapter. Entitles a person whose registration number the comptroller proposes to revoke under this section to 20 days' written notice of the time and place of the hearing on the revocation. Requires that the notice state the reason the comptroller is seeking to revoke the person's registration number. Requires the person, at the hearing, to show cause why the person's registration number should not be revoked.

(i) Requires the comptroller to give written notice of the revocation of a registration number under Subsection (h) to the person to whom the number was issued. Authorizes that the notice be personally served on the person or sent by mail to the person's address as shown in the comptroller's records.

(j) Prohibits the comptroller, if the comptroller revokes the person's registration number under Subsection (h), from reviving the registration number unless the comptroller is satisfied that the person will comply with this chapter and the rules adopted under this chapter. Authorizes the comptroller to prescribe the terms under which a revoked registration number may be revived.

(k) Requires the person who held the registration number, following the revocation of a registration number by the comptroller, on the next transaction with each seller to whom the person previously issued a claim for exemption with a registration number, to notify that seller that the person's registration number is no longer valid. Provides that the failure of a person to notify a seller as required by this subsection is considered a failure and refusal to pay the taxes imposed by this chapter by the person required to make the notification.

(l) Requires the comptroller to develop and operate an online system to enable a seller of an item or property described by Subsection (a) to search and verify the validity of the registration number stated on an exemption certificate. Provides that a seller is not required to use the online system.

(m) Provides that an exemption certificate that states a registration number issued by the comptroller to claim an exemption to which section applies is sufficient documentation of the seller's receipt of the certificate in good faith for purposes of Sections 151.054 (Gross Receipts Presumed Subject to Tax) and 151.104 (Sale for Storage, Use, or Consumption Presumed).

(n) Requires the comptroller by rule to establish procedures by which a seller may accept a blanket exemption certificate with a registration number issued by the comptroller to claim exemptions to which this section applies.

(o) Provides that a use of an item purchased using an exemption certificate with a registration number issued under this section in a manner or for a purpose other than the manner or purpose that qualified the sale, lease, rental, or other consumption of the item for the exemption may result in the revocation of the number.

(p) Requires a person eligible for a registration number who, at the time of purchasing, leasing, renting, or otherwise consuming an item for which the person may claim an exemption to which this section applies, has not obtained a registration number from the comptroller to pay the tax on the item to the seller at the time of the transaction. Authorizes the person to then apply for a registration number and, on receipt of the number, to apply to the comptroller for a refund of the tax paid, subject to the statute of limitations. Requires the comptroller by rule to establish procedures for processing the refund requests. Provides that tax collected by a seller under this subsection is not tax collected in error, and Section 111.104 (Refunds) does not apply to a refund request submitted under this subsection.

SECTION 2. Amends Section 151.3111(a), Tax Code, to exempt a service that is performed on tangible personal property that, if sold, leased, or rented, at the time of the performance of the service, would be exempted under this chapter because of the nature of the property, its use, or a combination of its nature and use, subject to Section 151.1551, from this chapter.

SECTION 3. Reenacts Section 151.316(a), Tax Code, as amended by Chapters 1162 (H.B. 3144) and 1373 (S.B. 958), Acts of the 81st Legislature, Regular Session, 2009, and amends it to provide that, subject to Section 151.1551, certain items as set forth in this subsection are exempted from the taxes imposed by this chapter.

SECTION 4. Amends Section 151.316(b), Tax Code, to provide that, subject to Section 151.1551, tangible personal property sold or used to be installed as a component of an

underground irrigation system is exempt from the taxes imposed by this chapter if the system is exclusively used or employed on a farm or ranch in the production of certain products.

SECTION 5. Amends Section 151.3162(b), Tax Code, to provide that, subject to Section 151.1551, certain items are exempted from the tax imposed by this chapter.

SECTION 6. Amends Section 151.317(a), Tax Code, to exempt gas and electricity, subject to Section 151.1551 and Subsection (d) (relating to requiring that the gas or electricity be sold to the person using the gas or electricity in the exempt manner) of this section, from the taxes imposed by this chapter when sold for certain uses.

SECTION 7. Amends Section 152.091, Tax Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Requires the person purchasing, using, or leasing the machine, trailer, or semitrailer, in addition to the other requirements prescribed by this section, to claim an exemption provided by Subsection (a) (relating to certain taxes not applying to the sale or use of certain equipment) or (b) (relating to the taxes imposed by this chapter not applying to certain purchases), to provide an exemption certificate with a registration number issued by the comptroller under Section 151.1551.

(c) Requires the person renting the vehicle, to claim the exemption, to also provide on the certificate a registration number issued by the comptroller under Section 151.1551.

SECTION 8. Provides that, notwithstanding Section 151.1551, Tax Code, as added by this Act, a person is not required to state a registration number on an exemption certificate or on a form prescribed by the comptroller to claim an exemption to which Section 151.1551, Tax Code, as added by this Act, applies, or an item under Section 152.091 (Farm or Timber Use), Tax Code, that is claimed before January 1, 2012.

SECTION 9. Provides that the change in law made by this Act does not affect tax liability accruing before January 1, 2012. Provides that that liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 10. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 11. Effective date: September 1, 2011.