

BILL ANALYSIS

Senate Research Center
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S.B. 1602
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently in Texas, agricultural exemptions for sales and use tax are offered for qualified purchases. The purpose of agricultural exemptions is to reduce the cost of agricultural-related products to consumers.

Currently, these exemptions are offered to all buyers provided that they are purchasing qualified goods and services for qualified purposes. Sellers of these goods are required to determine exempt and non-exempt purchases and discern the use of the goods being purchased in order to accept the exemption request in good faith. The comptroller of public accounts (comptroller) holds the buyer and the seller jointly responsible for the lawful use of agricultural exemptions. However, in practice, only the seller is held liable for non-qualified purchases. This creates an inherent conflict of interest between the buyer, seller, and the comptroller.

Over time this conflict of interest has grown to include a substantial number of transactions between buyers and sellers that might not strictly fit the intent of the original law. The comptroller's recent attempts to refine the process to better serve the interested parties has not been completely successful. The current system continues to be a poorly understood and often abused process that serves neither the state nor those for whom it was intended to benefit.

S.B. 1602 would require purchasers of certain agriculture items who claim a sales and use tax exemption to apply for an exemption number from the comptroller. The exemption number must be shown on the purchaser's exemption certificate. Persons applying for an exemption number must own or operate a farm or ranch as defined in current law. An application for an exemption number must be on a form from the comptroller, and provide the name and address of the business owned, the type of crops, livestock, or other agricultural products sold, and any other data the comptroller deems necessary. Exemption numbers would be subject to renewal every four years.

As proposed, S.B. 1602 amends current law relating to the exemption from the sales and use tax for certain agricultural items.

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. Subchapter E, Chapter 151, Tax Code, is amended by adding Section 151.1551, as follows:

Sec. 151.1551. EXEMPTION NUMBER REQUIRED FOR CERTAIN AGRICULTURAL PROPERTY. (a) Requires that, to qualify for an exemption for an item under Section 151.316(a)(3), (6), (7), (10), or (12) or tangible personal property under Section 151.316(b), an exemption number be stated on the exemption certificate provided by the purchaser.

(b) Provides that a person is eligible for an exemption number if the person owns or operates a business that uses one or more tracts of land in this state as a farm or ranch, as those terms are defined by Section 151.316(c) (relating to defining certain terms).

(c) Authorizes a person who is eligible to apply to the comptroller for an exemption number. Requires that the application:

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

(2) state the types of crops, livestock, or other agricultural products that are held for sale in the regular course of the business owned or operated or to be owned or operated by the applicant;

(3) state the name and address of the business owned or operated or to be owned or operated by the applicant; and

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

(d) Requires the comptroller by rule to develop and implement a procedure by which an applicant is authorized to submit an application described by Subsection (c) electronically.

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

(f) Authorizes the comptroller, after adequate written notice and a hearing, to suspend or revoke the exemption number issued to a person who fails to comply with this chapter or with a rule adopted under this chapter. Requires the person at the hearing to show cause why the person's exemption number should not be suspended or revoked.

(g) Requires the comptroller to give written notice of the suspension or revocation of an exemption number under Subsection (f) to the person to whom the number was issued. Authorizes the notice to be personally served on the person or sent by mail to the person's address as shown in the comptroller's records.

(h) Prohibits a person, if the comptroller revokes the person's exemption number under Subsection (f), from being issued a new exemption 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 suspended exemption number is authorized to be reinstated.

(i) Authorizes a taxpayer to appeal the suspension or revocation of an exemption number in the same manner that appeals are made from a final deficiency determination.

(j) Requires the comptroller by rule 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 exemption number stated on an exemption certificate at the time the certificate is received and to provide documentation of the verification. Provides that documentation provided by the system constitutes proof that the exemption certificate was received 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). Provides that a seller is not required to use the online system.

SECTION 2. 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, as follows:

(a) Provides that, subject to Section 151.1551, the following items are exempted from the taxes imposed by this chapter:

- (1) horses, mules, and work animals;
- (2) animal life the products of which ordinarily constitute food for human consumption;
- (3) feed for farm and ranch animals;
- (4) feed for animals that are held for sale in the regular course of business;
- (5) seeds and annual plants the products of which ordinarily constitute food for human consumption, are to be sold in the regular course of business, or are used to produce feed for animals exempted by this section;
- (6) fertilizers, fungicides, insecticides, herbicides, defoliant, and desiccants exclusively used or employed on a farm or ranch in the production of food for human consumption, feed for animal life, or other agricultural products to be sold in the regular course of business;
- (7) 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 food for human consumption, grass, feed for animal life, or other agricultural products to be sold in the regular course of business;
- (8) 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 if 50 percent or more of the products processed, packed, or marketed at or from the location are produced by the original producer and not purchased or acquired from others; and the producer does not process, pack, or market for consideration any agricultural products that belong to other persons in an amount greater than five percent of the total agricultural products processed, packed, or marketed by the producer;
- (9) ice exclusively used by commercial fishing boats in the storing of aquatic species including but not limited to shrimp, other crustaceans, finfish, mollusks, and other similar creatures;
- (10) 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 the building or maintaining of roads or water facilities or in the production of food for human consumption, grass, feed for animal life, or other agricultural products to be sold in the regular course of business;
- (11) machinery and equipment exclusively used in an agricultural aircraft operation, as defined by 14 C.F.R. Section 137.3; and
- (12) tangible personal property incorporated into a structure that is used for the disposal of poultry carcasses in accordance with Section 26.303 (Handling and Disposal of Poultry Carcasses), Water Code.

SECTION 3. 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 food for human consumption, grass, feed or forage for animal life the products of which ordinarily constitute food for human consumption, or horses, mules, and work animals, or other agricultural products to be sold in the regular course of business.

SECTION 4. Provides that, notwithstanding Section 151.1551, Tax Code, as added by this Act, a person is not required to state an exemption number on an exemption certificate to qualify for an exemption under Section 151.316 (Agricultural Items), Tax Code, that is claimed before January 1, 2012.

SECTION 5. 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 that 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 6. 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 7. Effective date: September 1, 2011.