

BILL ANALYSIS

Senate Research Center
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S.B. 1525
By: Watson
Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The comptroller of public accounts of the State of Texas is seeking to clarify when the "sale for resale" sales tax exemption may be claimed. The sale for resale exemption is typically granted to a taxpayer who is purchasing products to be resold to the final consumer, who ultimately pays the sales tax.

S.B. 1525 provides clarification to ensure that sales tax is appropriately paid by the final consumer of a taxable good or service and to ensure that the resale exemption is limited to transactions that are ultimately subject to sales tax. The bill addresses several aspects of the sale for resale exemption:

Coin-Operated Amusement Services: Clarifies current law that goods purchased to be used as prizes in certain coin-operated machines (i.e. plush toys in the claw game) do not qualify for the resale exemption because the service provided by the machine is not ultimately taxed under the sales tax.

Non-Profit Organizations and Contracts with the Federal Government: Clarifies when taxable items integral to the performance of a contract with a non-profit organization or with the federal government may be purchased tax-free for resale.

Oil Well Services: Codifies current practice that the sales tax applies to property used to provide a nontaxable service, such as items used, consumed, or expended into a well by a purchaser who is performing a service to an oil and gas well. An example of this would be sand used during the fracking process.

Environment and Conservation Services: Section 151.338, Tax Code, provides an exemption for labor to repair tangible personal property if the repair is required by a statute or rule in order to protect the environment. The bill clarifies that charges for parts and labor must be separately stated in order for the labor charge to qualify for the exemption. It also codifies current agency policy for these type of repairs provided for equipment such as x-ray machines in health care facilities and oncology centers. They may claim a sales tax exemption on 65 percent of a lump sum charge for parts and labor for repairs of tangible personal property required by a statute or rule in order to protect the environment.

As proposed, S.B. 1525 amends current law relating to the application of the sales and use tax to certain property and services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.0028, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Redefines "amusement services" to include an admission or ticket to an amusement service. Makes nonsubstantive changes.

(c) Provides that "amusement services" does not include services provided through coin-operated machines that are operated by the consumer.

SECTION 2. Amends Section 151.0045, Tax Code, as follows:

Sec. 151.0045. "PERSONAL SERVICES." Redefines "personal services" to mean those personal services listed as personal services under Group 721, Major Group 72 of the Standard Industrial Classification Manual, 1972, and includes massage parlors, escort services, and Turkish baths under Group 729 of said manual but does not include any other services listed under Group 729 unless otherwise covered under this chapter (Limited Sales, Excise, and Use Tax), rather than under this Act, prepared by the statistical policy division of the office on management and budget, office of the president of the United States. Provides that the term does not include services provided through coin-operated machines that are operated by the consumer.

SECTION 3. Amends Section 151.006, Tax Code, by amending Subsections (a) and (c) and adding Subsection (e), as follows:

(a) Redefines "sale for resale" to mean a sale of:

(1) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of reselling it as a taxable item, rather than reselling it with or as a taxable item, as defined by Section 151.010 (Taxable Item) in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property or taxable service;

(2)–(4) makes no changes to these subdivisions;

(5) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, for the sale of tangible personal property with an entity or organization exempted from the taxes imposed by this chapter under Section 151.309 (Governmental Entities) or 151.310 (Religious, Educational, and Public Service Organizations) only if the purchaser, rather than except as provided by Subsection (c), 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 the federal government only if the purchaser:

(A) allocates and bills to the contract the cost of the property or service, rather than property, as a direct or indirect cost; and

(B) transfers title to the property to the exempt entity or organization under the contract and any applicable acquisition regulations, rather than transfers title to the property to the federal government under the contract and applicable federal acquisition regulations.

(c) Provides that a sale for resale does not include the sale of tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of performing a contract, or a subcontract of a contract, for a service not listed as a taxable service under Section 151.0101 ("Taxable Services"), rather than for the purpose of performing a service that is not taxed under this chapter, regardless of whether title transfers to the service provider's customer, unless the tangible personal property or taxable service is purchased for the purpose of reselling it to the United States in a contract, or a subcontract of a contract, with any branch of the Department of Defense,

Department of Homeland Security, Department of Energy, National Aeronautics and Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office to the extent allocated and billed to the contract with the federal government.

(e) Provides that a sale for resale does not include 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 Chapter 191 (Miscellaneous Occupation Taxes).

SECTION 4. Amends Section 151.302, Tax Code, by adding Subsection (b-1) to provide that a taxable service used to perform a taxable service is not considered resold unless the purchaser acquires the service for the purpose of transferring it as an integral part of performing a taxable service.

SECTION 5. Amends Section 151.338, Tax Code, as follows:

Sec. 151.338. ENVIRONMENT AND CONSERVATION SERVICES. (a) Creates this subsection from existing text and makes nonsubstantive changes. Provides that, subject to Subsections (b) and (c), labor to repair, remodel, maintain, or restore tangible personal property is exempted from the taxes imposed by this chapter if:

- (1) creates this subdivision from existing text and makes a nonsubstantive change;
- (2) the charge for the labor is itemized separately from the charge for materials furnished.

(b) Provides that the exemption provided by Subsection (a) does not apply to the charge for materials furnished by the service provider to the purchaser as part of the service.

(c) Provides that sixty-five percent of a lump-sum charge for labor and materials to repair, remodel, maintain, or restore tangible personal property is exempted from the taxes imposed by this chapter if the repair, remodeling, maintenance, or restoration is required under the circumstances described by Subsection (a)(1) and the labor and materials are purchased for a health care facility, as defined by Section 108.002 (Definitions), Health and Safety Code, or for an oncology center.

SECTION 6. Repealer: Section 151.335 (Coin-Operated Services), Tax Code.

SECTION 7. Provides that 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 8. Effective date: upon passage or October 1, 2019.