

## **BILL ANALYSIS**

Senate Research Center

S.B. 736  
By: West  
Finance  
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As Filed

### **DIGEST**

Currently, Texas law defining "tangible personal property" for tax purposes was adopted in 1979. At that time the legislature did not foresee the development and mass commercialization of computers and their associated software. While computers are clearly tangible personal property in the form of fixed assets, the issue of software is more ambiguous. Software is owned by persons who have bought it for the commercial uses it provides, by those who have developed it themselves for business applications, and is also held for resale by wholesalers and retailers. The courts have recently ruled that all software is intangible and exempt from ad valorem taxation including software held in inventory. The court concluded that in the case of sales tax, software was intangible property and as such not subject to sales tax. In response to this ruling, the legislature amended the definition of tangible personal property for sales tax purposes to include software. However, at that time the legislature failed to amend an almost identical definition in the Property Tax Code. This bill would correct the oversight and change the definition of tangible personal property for ad valorem taxes to include software held as inventory.

### **PURPOSE**

As proposed, S.B. 736 redefines "tangible personal property" and defines "computer program" and "computer software" to make software held as inventory subject to taxation.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.04, Tax Code, by amending Subdivision (3) and adding Subdivisions (20) and (21), to provide that the term "tangible personal property" includes an inventory of computer software held for sale at wholesale or retail by a person who is in the business of selling property of that kind. Defines "computer program" and "computer software."

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.