

BILL ANALYSIS

Senate Research Center
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H.B. 2358
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been noted that sellers are currently prohibited from advertising the sale of a product for which the seller will absorb the sales tax as an incentive to buy the product from the seller. C.S.H.B. 2358 seeks to increase consumer purchasing power and potential seller revenue by allowing sellers to pay the taxes on a product they are selling.

H.B. 2358 amends current law relating to the payment of certain sales and use taxes by a retailer.

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 111.016, Tax Code, by adding Subsection (a-2) and amending Subsection (b), as follows:

(a-2) Provides that a retailer who advertises, holds out, or states that the retailer will pay the tax as provided by Section 151.704(b) and makes a sale of a taxable item:

(1) is presumed to have received or collected the amount of the taxes imposed by Chapter 151 (Limited Sales, Excise, and Use Tax) on the sale or storage, use, or consumption in this state of the taxable item;

(2) is required to hold the amount described by Subdivision (1) in trust for the benefit of the state; and

(3) is liable to the state for the amount described by Subdivision (1) plus any accrued penalties and interest on the amount.

(b) Provides that, with respect to tax or other money subject to the provision of Subsection (a) (relating to the provision that any person who receives or collects a tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the state for the full amount collected) or (a-2), rather than Subsection (a), an individual who controls or supervises the accounting of tax or money from another person or an individual who controls or supervises the accounting for and paying over of the tax or money and who willfully fails to pay or cause to be paid the tax or money is liable as responsible individual for an amount equal to the tax or money not paid or caused to be paid.

SECTION 2. Amends Section 151.704, Tax Code, as follows:

Sec. 151.704. New heading: SALES TAX ABSORPTION; CRIMINAL PENALTY. (a) Provides that, except as provided by Subsections (b) and (c), a retailer commits an offense if the retailer directly or indirectly advertises, holds out, or states to a customer or to the public that the tax is not part of the sales price payable by the customer. Deletes existing Subdivisions (1) and (2).

(b) Authorizes a retailer to directly or indirectly advertise, hold out, or state to a customer or to the public that the retailer will pay the tax for the customer if:

(1) the retailer indicates in the advertisement, holding out, or statement that the retailer is paying the tax for the customer;

(2) the retailer does not indicate or imply in the advertisement, holding out, or statement that the sale is exempt or excluded from taxation; and

(3) any purchaser's receipt or other statement given to the customer listing the sales price paid or to be paid by the customer separately states the amount of the tax and indicates that the tax will be paid by the retailer.

(c)-(d) Makes nonsubstantive changes to these subsections. Redesignates existing Subsection (b) as Subsection (c) and existing Subsection (c) as Subsection (d).

SECTION 3. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides 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 4. Makes application of this Act prospective.

SECTION 5. Effective date: October 1, 2019.