

- SUBJECT:** Exempting school booster clubs from paying certain sales taxes
- COMMITTEE:** Ways and Means — favorable, without amendment
- VOTE:** 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama
0 nays
2 absent — Martinez Fischer, Ritter
- WITNESSES:** For — David Rac and Wattine Rac, La Marque Athletic Booster Club; Drew Russell, McNeil Mavericks Booster Club; (*Registered, but did not testify*: Ellen Arnold, Texas PTA)

Against — (*Registered, but did not testify*: Mark Israelson, City of Plano; TJ Patterson, City of Fort Worth)

On — Brad Reynolds, Texas Comptroller of Public Accounts
- BACKGROUND:** Food products for human consumption are exempt from state sales-and-use taxes under Tax Code, sec. 151.314. Food products, meals, soft drinks, and candy are exempt from sales taxes if they are served during the regular school day by a:
- public or private school;
 - school district;
 - student organization;
 - parent-teacher association under an agreement with an elementary or secondary school; or
 - parent-teacher association during a fund-raising sale that does not benefit an individual.
- DIGEST:** HB 697 would exempt from sales-and-use taxes “school spirit merchandise” and food products, meals, soft drinks, and candy sold by a booster club or other school support organization formed to support a school or school district, provided:
- the merchandise was sold under an agreement with the school

during the regular school day or during an event sponsored or sanctioned by a school or district; and

- the proceeds from the sales benefitted the school or district.

The bill would take effect September 1, 2013, and would apply to any tax liability after that date.

**SUPPORTERS
SAY:**

HB 697 would support Texas schools by granting a sales tax exemption to booster clubs that raised funds for schools through sales of concessions and merchandise.

Current law exempts sales taxes for schools, student organizations, and parent-teacher associations selling food products during the school day, but not for school booster clubs. While some booster clubs have 501(c)(3) nonprofit status, many are hesitant to go through the registration process and do not want to pay the costs necessary (estimated between about \$1,000 and \$1,500) to achieve formal nonprofit status. These non-tax-exempt booster clubs now are required to collect sales taxes on all goods sold at events and remit the taxes to the comptroller. Further, because they do not have a tax exemption, they already pay sales taxes once on any goods they purchase to resell for the benefit of the school.

The administrative inconvenience of collecting and reporting sales taxes is sufficient to discourage many who otherwise would like to be involved in organizing and assembling funds for the school. Even if the comptroller has not been enforcing this provision, its presence on the books breeds a sense of reluctance among those who would otherwise be involved in supporting their school through selling concessions.

The recent environment of fiscal austerity highlights the need to remove barriers to individuals who wish to assume an active role in supporting their schools. Allowing booster clubs to sell school spirit merchandise and concessions during the normal course of the school day or at a school event would ensure the proceeds from these activities went directly to schools.

HB 697 would not change existing tax exemptions for food products, soft drinks, and candy. It simply would extend these exemptions to booster clubs. The debate on nutrition in schools is an important one, but is not the subject of this bill.

OPPONENTS
SAY:

HB 397 would carve out a sales tax exemption for certain groups selling goods for certain purposes. Singling out one group for a tax exemption, even for a meritorious purpose, raises issues of uniformity in taxation. There are a wide variety of groups selling goods for lofty purposes that would not be included in this exemption.

The comptroller has stated that booster clubs, whether registered as a nonprofit or not, are not subject to sales taxes for selling food products at school-related events. If such clubs want to sell taxable items, they can register as a nonprofit, which would allow them to hold up to two tax-free sales or auctions each calendar year. The nonprofit registration requirement is important to ensuring a level of accountability for groups that go beyond selling concessions.

The bill also would reinforce and expand the current sales tax exemption for candy and soft drinks sold during the course of the day or at events to benefit schools. This would contribute to existing concerns about the quality of nutrition available in schools. Making candy and soft drinks sales tax free could send the message that such products were endorsed by schools and parents for consumption by children.

While HB 397 is well intended, its sales-and-use tax exemptions would cost the state about \$1.9 million in fiscal 2014-15, according to the Legislative Budget Board (LBB), with cities, counties and other units of local government also projected to lose revenue. With the budgets of state and local governments already stretched, now is not the time to propose nonessential tax exemptions.

OTHER
OPPONENTS
SAY:

The definition of “school spirit merchandise,” which the bill defines as “tangible personal property intended to be worn or displayed as a show of support” for a school could encompass a broad range of items. Placing a school logo on a variety of items, under this definition, could qualify them for a sales tax exemption under the bill. This language opens up the tax exemption to all kinds of creative marketing and sales activities. The definition should be reined in to apply more tightly to school team apparel and other items of little market value.

NOTES:

The LBB projects that HB 697 would result in a negative impact of about \$1.9 million to general revenue related funds for fiscal 2014-15 due to the bill’s sales-and-use tax exemptions. The LBB estimates the fiscal impact to local governments in fiscal 2014-15 as follows:

- a loss of \$352,000 to cities;
- a loss of \$124,000 to transit authorities; and
- a loss of \$57,000 to counties.