

BILL ANALYSIS

Senate Research Center

S.B. 1633
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, public schools and other tax-exempt organizations may claim an exemption from sales tax for items sold in fundraisers. This tax exemption was enacted by the legislature to relieve schools from the sales tax collection burden, encourage Texans to support school fundraisers, and increase funding for school programs. For many Texas public schools and other tax-exempt organizations, these tax-exempt fundraising sales conducted by parents and students are critical to the survival of various educational and extracurricular programs that otherwise would not have adequate funding. These tax-exempt fundraisers help pay for computers, field trips, athletics, music, art, and other programs, and in recent years the necessity for fundraising to support school programs has increased. The technical aspects of the tax exemption have proven to be problematic administrative burdens for schools, fundraising suppliers, and the comptroller of public accounts of the State of Texas (comptroller). This legislation will encourage community support of public schools and allow the money raised by school fundraisers to be used for educational purposes, rather than administrative compliance.

S.B. 1633 amends the law governing sales tax exemptions for certain organizations to prohibit the comptroller from regarding certain organizations qualifying for an exemption from the state sales tax as the agent of the organization's wholesale supplier or distributor if, in exchange for consideration, title to taxable items is transferred from the supplier or distributor to the organization for purposes of the sale of those items at a tax-free sale or auction.

As proposed, S.B. 1633 amends current law relating to the sales tax treatment of a fundraising sale by a qualified organization.

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 151.310, Tax Code, by amending Subsections (c) and (d) and adding Subsections (b-1), (c-1), (c-2), and (c-3), as follows:

(b-1) Defines, in this section, "agent in fact," "market," "net sales proceeds," "occasional," "fundraiser," and "qualified organization."

(c) Provides that the sale of a taxable item, the sales price of which is \$5,000 or less, by a qualified organization is exempted from the taxes imposed by this chapter if:

(1) the sale occurs in a fundraiser; and

(2) the qualified organization purchases and receives delivery of the item from a wholesale supplier or distributor, and resells and delivers the item to a consumer, regardless of the sequence in which the product is marketed, purchased, received, sold and delivered by the organization.

Deletes existing text authorizing an organization that qualifies for an exemption under Subsection (a)(1) (relating to exempting an organization created for religious, educational, or charitable purposes from the taxes imposed by this chapter under certain circumstances) or (a)(2) (relating to an organization qualifying for an exemption under certain subsections of Section 501(c), Internal Revenue Code, under certain circumstances) of this section, and each bona fide chapter of the organization, to hold two tax free sales or auctions under this subsection during a calendar year and to continue those sales or auctions for one day only. Deletes existing text providing that the sale of a taxable item, the sales price of which is \$5,000 or less, by a qualified organization or chapter of the organization at a tax free sale or auction is exempted from the sales tax imposed by Subchapter C (Imposition and Collection of Sales Tax) of this chapter, except that a taxable item manufactured by or donated to the qualified organization or chapter of the organization is authorized to be sold tax free regardless of the sales price to any purchaser other than the donor.

(c-1) Creates this subsection from existing text. Authorizes a taxable item manufactured by or donated to the qualified organization to be sold tax free regardless of the sales price to any purchaser other than the donor. Provides that the storage, use, or consumption of a taxable item that is acquired from a qualified organization at a tax-free sale or auction and that is exempted under this subsection from the taxes imposed by Subchapter C is exempted from the use tax imposed by Subchapter D (Imposition and Collection of Use Tax) until the item is resold or subsequently transferred. Makes conforming and nonsubstantive changes.

(c-2) Authorizes a qualified organization that purchases a taxable item for resale in a fundraiser to claim the sale for resale exemption. Provides that a qualified organization is not required to hold a sales tax permit to claim the sale for resale exemption in connection with a fundraiser.

(c-3) Provides that a qualified organization is considered to have purchased, as that term is defined in Section 151.005 ("Sale" or "Purchase"), a taxable item for resale in a fundraiser if the qualified organization receives title for consideration under a contract, purchase order, invoice, shipping document or other proof.

(d) Prohibits the comptroller of public accounts of the State of Texas from regarding a qualified organization that conducts a fundraiser as the agent of the organization's wholesale supplier or distributor under Section 151.024 (Persons Who May Be Regarded As Retailers) unless the organization is the agent in fact of the supplier or distributor.

Deletes existing text authorizing each organization to hold one additional tax free sale or auction during the calendar year in which the joint sale or auction is held if two or more organizations jointly hold a tax free sale or auction. Deletes existing text providing that the employment of and payment of a reasonable fee to an auctioneer to conduct a tax free auction does not disqualify an otherwise qualified organization from receiving the exemption provided by Subsection (c).

SECTION 2. Effective date: upon passage or September 1, 2013.