

BILL ANALYSIS

Senate Research Center
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H.B. 3484
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3484 relates to the sales and use tax treatment of certain snack and food items. S.B. 1151, Acts of the 83rd Legislature, Regular Session, 2013, was passed to help simplify the basis for when a food product is considered taxable for convenience stores and retail businesses. This was necessary because retail businesses are increasingly offering a variety of food products to consumers. Convenience stores now feature not only snack items, but may also offer consumers a quick service restaurant or prepared foods. Grocery stores now sell not only traditional food products but may also have a deli or prepared foods section. Questions often arose for both sellers and consumers as to when a food product is considered taxable. S.B. 1151 fixed this problem.

However, after this law became effective, a few proposed changes were offered by retail businesses, convenience stores, and the comptroller's office. These changes further clarify for sellers and purchasers that certain food items are "snacks" or "not snacks" for taxation purposes.

Excluded as "snack items" and not taxable:

- Pine nuts, since they are most often used in cooking, baking, or meal preparation.

Added as "snack items" and taxable:

- Corn nuts, pork rinds, sunflower seeds and pumpkin seeds because they are commonly purchased as snack items similar to nuts and chips, and have generally been taxed if sold in portions of less than five ounces.
- Individual ice cream sundries and popsicles. These items have been taxed by rule for many years. Sorbets, ice pops, and other frozen fruit items are added since they have been traditionally treated in the same manner as ice cream and will now provide a clear line for sellers and purchasers.

H.B. 3483 also clarifies that the word "deli" is added to the list of restaurant type businesses. Language is added to make clear that convenience stores and grocery stores are not like restaurants for purposes of this section. If a grocery or convenience store contains a restaurant, lunch counter or similar area, only that portion of the business will be treated as a restaurant.

H.B. 3484 amends current law relating to the application of sales and use taxes to certain food items and adds a provision subject to a criminal penalty.

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 151.314, Tax Code, by amending Subsections (b-1), (c-2), and (h) and adding Subsection (c-4), as follows:

(b-1) Redefines "snack items."

(c-2) Provides that the exemption provided by Subsection (a) (exempting food products for human consumption from the taxes imposed by this chapter) does not include the following prepared food:

(1) food, food products, and drinks, including meals, milk and milk products, fruit and fruit products, sandwiches, salads, processed meats and seafoods, vegetable juice, and ice cream in cones or small cups, served, prepared, or sold ready for immediate consumption by restaurants, rather than in or sold for immediate consumption in or by restaurants, lunch counters, cafeterias, delis, vending machines, hotels, or like places of business or sold ready for immediate consumption from pushcarts, motor vehicles, or any other form of vehicle;

(2) Makes no change to this subdivision; or

(3) two or more food ingredients mixed or combined by the seller for sale as a single item, including items that are sold in an unheated state by weight or volume as a single item, regardless of where prepared, but not including food that is only cut, repackaged, or pasteurized by the seller.

(c-4) Provides that, for purposes of Subdivision (c-2)(1), if a grocery store or convenience store contains a type of location listed in that subdivision, the store is considered a like place of business for purposes of that subdivision, but only in relation to items sold at that location.

(h) Deletes existing text providing that, for purposes of this subsection, an individual-sized portion is a portion that contains less than 2.5 ounces, if the package does not specify the number of servings.

SECTION 2. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that the liability continues in effect as if this Act had not been enacted, and 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 3. Effective date: September 1, 2015.