

1-1 By: Guillen (Senate Sponsor - Paxton) H.B. No. 2358
 1-2 (In the Senate - Received from the House May 6, 2019;
 1-3 May 7, 2019, read first time and referred to Committee on Finance;
 1-4 May 13, 2019, reported favorably by the following vote: Yeas 14,
 1-5 Nays 0; May 13, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22			X	

1-23 A BILL TO BE ENTITLED
 1-24 AN ACT

1-25 relating to the payment of certain sales and use taxes by a
 1-26 retailer.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 111.016, Tax Code, is amended by adding
 1-29 Subsection (a-2) and amending Subsection (b) to read as follows:

1-30 (a-2) A retailer who advertises, holds out, or states that
 1-31 the retailer will pay the tax as provided by Section 151.704(b) and
 1-32 makes a sale of a taxable item:

1-33 (1) is presumed to have received or collected the
 1-34 amount of the taxes imposed by Chapter 151 on the sale or storage,
 1-35 use, or consumption in this state of the taxable item;

1-36 (2) shall hold the amount described by Subdivision (1)
 1-37 in trust for the benefit of the state; and

1-38 (3) is liable to the state for the amount described by
 1-39 Subdivision (1) plus any accrued penalties and interest on the
 1-40 amount.

1-41 (b) With respect to tax or other money subject to the
 1-42 provisions of Subsection (a) or (a-2), an individual who controls
 1-43 or supervises the collection of tax or money from another person, or
 1-44 an individual who controls or supervises the accounting for and
 1-45 paying over of the tax or money, and who wilfully fails to pay or
 1-46 cause to be paid the tax or money is liable as a responsible
 1-47 individual for an amount equal to the tax or money not paid or
 1-48 caused to be paid. The liability imposed by this subsection is in
 1-49 addition to any other penalty provided by law. The dissolution of a
 1-50 corporation, association, limited liability company, or
 1-51 partnership does not affect a responsible individual's liability
 1-52 under this subsection.

1-53 SECTION 2. Section 151.704, Tax Code, is amended to read as
 1-54 follows:

1-55 Sec. 151.704. SALES TAX ABSORPTION [PROHIBITED
 1-56 ADVERTISING]; CRIMINAL PENALTY. (a) Except as provided by
 1-57 Subsections (b) and (c), a [A] retailer commits an offense if the
 1-58 retailer directly or indirectly advertises, holds out, or states to
 1-59 a customer or to the public that the tax is not part of the sales
 1-60 price payable by the customer [retailer:

1-61 (1) will assume, absorb, or refund a part of the tax;

2-1 ~~or~~

2-2 [~~(2) will not add the tax to the sales price of a taxable~~
2-3 ~~item sold, leased, or rented].~~

2-4 (b) A retailer may directly or indirectly advertise, hold
2-5 out, or state to a customer or to the public that the retailer will
2-6 pay the tax for the customer if:

2-7 (1) the retailer indicates in the advertisement,
2-8 holding out, or statement that the retailer is paying the tax for
2-9 the customer;

2-10 (2) the retailer does not indicate or imply in the
2-11 advertisement, holding out, or statement that the sale is exempt or
2-12 excluded from taxation; and

2-13 (3) any purchaser's receipt or other statement given
2-14 to the customer listing the sales price paid or to be paid by the
2-15 customer separately states the amount of the tax and indicates that
2-16 the tax will be paid by the retailer.

2-17 (c) This section does not prohibit a utility from billing a
2-18 customer in one lump-sum price including the utility sales price
2-19 and the amount of the tax imposed by this chapter.

2-20 (d) [~~(c)~~] An offense under this section is a misdemeanor
2-21 punishable by a fine of not more than \$500.

2-22 SECTION 3. The changes in law made by this Act do not affect
2-23 tax liability accruing before the effective date of this Act. That
2-24 liability continues in effect as if this Act had not been enacted,
2-25 and the former law is continued in effect for the collection of
2-26 taxes due and for civil and criminal enforcement of the liability
2-27 for those taxes.

2-28 SECTION 4. The change in law made by this Act applies only
2-29 to an offense committed on or after the effective date of this Act.
2-30 An offense committed before the effective date of this Act is
2-31 governed by the law in effect on the date the offense was committed,
2-32 and the former law is continued in effect for that purpose. For
2-33 purposes of this section, an offense was committed before the
2-34 effective date of this Act if any element of the offense occurred
2-35 before that date.

2-36 SECTION 5. This Act takes effect October 1, 2019.

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