

Moved by Harris

Seconded by Rice

IN THE SENATE
SENATE AMENDMENT TO H.B. NO. 171

AMENDMENT TO SECTION 1

1
2 On page 1 of the printed bill, delete lines 7 through 42; and on page 2,
3 delete lines 1 through 25, and insert:

4 "63-3622. EXEMPTIONS -- EXEMPTION CERTIFICATES AND RESALE CERTIFI-
5 CATES -- PENALTIES. (a) To prevent evasion of the sales and use tax, it shall
6 be presumed that all sales are subject to the taxes imposed by the provisions
7 of this chapter and the retailer shall have the burden of establishing the
8 facts giving rise to such exemption unless the purchaser delivers to the re-
9 tailer, or has on file with the retailer, an exemption certificate or resale
10 certificate, in which case the purchaser shall bear the burden of establish-
11 ing the facts giving rise to the exemption.

12 (b) An exemption certificate shall show the purchaser's name, business
13 name and address (if any), address, a federal employer identification number
14 or driver's license number and state of issue, and signature, date, and the
15 reason for and nature of the claimed exemption.

16 (c) A resale certificate shall be signed and dated by, and bear the name
17 and address of, the purchaser or his agent, shall show the federal employer
18 identification number or driver's license number and state of issue, shall
19 indicate the number of the permit issued to the purchaser or that the pur-
20 chaser is an out-of-state retailer, and shall indicate the general charac-
21 ter of the tangible personal property sold or rented by the purchaser in the
22 regular course of business. A resale certificate relieves the seller from
23 the burden of proof only if taken from a person who is engaged in the busi-
24 ness of selling or renting tangible personal property and who holds a permit
25 provided for in this section, or who is a retailer not engaged in business in
26 this state, and who, at the time of purchasing the tangible personal prop-
27 erty, intends to sell or rent it in the regular course of business or is un-
28 able to ascertain at the time of purchase whether the property will be sold or
29 will be used for some other purpose. If a purchaser who gives a resale cer-
30 tificate makes any use of the property other than retention, demonstration
31 or display while holding it for sale or rent in the regular course of busi-
32 ness, the use shall be taxable to the purchaser as of the time the property is
33 first used by him, and the sales price of the property to him shall be deemed
34 the measure of the tax.

35 (d) A seller may accept an exemption certificate or resale certificate
36 from a purchaser prior to the time of sale, at the time of the sale, or at any
37 reasonable time after the sale when necessary to establish the privilege of
38 the exemption. Other than as provided elsewhere in this section, when an ex-
39 emption certificate or resale certificate, properly executed, is presented
40 to or is on file with the seller, the seller has no duty or obligation to col-

1 lect sales or use taxes in regard to any sales transaction so documented re-
2 gardless of whether the purchaser properly or improperly claimed an exemp-
3 tion. A seller so relieved of the obligation to collect tax is also relieved
4 of any liability to the purchaser for failure to collect tax or for making any
5 report or disclosure of information required or permitted under this chap-
6 ter. The purchaser providing an exemption certificate or resale certificate
7 to a seller shall bear all responsibility and liability for any subsequent
8 audit of the transaction and the seller shall be held harmless. A seller need
9 not accept an exemption certificate or resale certificate that is not read-
10 able, legible or copyable.

11 (e) Any person who gives an exemption certificate or resale certificate
12 with the intention of evading payment of the amount of the tax applicable to
13 the transaction is guilty of a misdemeanor and punishable by a fine not ex-
14 ceeding one thousand dollars (\$1,000) or imprisonment for not more than one
15 (1) year, or by both such fine and imprisonment.

16 (f) An exemption certificate or resale certificate shall be substan-
17 tially in such form as the state tax commission may prescribe. The claim for
18 the exemption may be a part of the documentation on a sales invoice, purchase
19 order, or other documentation retained by the retailer with regard to the
20 sale. Unless the purchaser has an exemption certificate or resale certifi-
21 cate on file with the seller, the purchaser or his agent must sign the ex-
22 emption claim, which shall be in addition to any other signature which the
23 seller normally requires on sales invoices, purchase orders, or other sales
24 documentation.

25 (g) It shall be presumed that sales made to a person who has completed an
26 exemption certificate or resale certificate for the seller's records are not
27 taxable and the seller need not collect sales or use taxes unless the tangi-
28 ble personal property or services purchased are taxable to the purchaser as
29 a matter of law in the particular instance claimed on the exemption certifi-
30 cate.".

31 CORRECTION TO TITLE

32 On page 1, in line 3, following "EXEMPTION" insert: "CERTIFICATES".