

CHAPTER 11

S.B. No. 299

AN ACT

relating to the imposition of, rates of, application of, and revenue derived from certain local sales and use taxes.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), is amended by amending Subsections F and G and adding Subsection L to read as follows:

F. The ballot at such election shall be printed to provide for voting for or against the following proposition:

"The adoption of an additional one-half of one percent ($\frac{1}{2}\%$) local sales and use tax within the city to be used to reduce the property tax rate."

The ballot at such election in a city that does not impose a property tax shall be printed to provide for voting for or against the following proposition:

"The adoption of an additional one-half of one percent ($\frac{1}{2}\%$) local sales and use tax within the city."

The election shall be conducted in the manner provided by law for other municipal elections unless otherwise specified herein. If a majority of the votes cast at such an election be in favor of the adoption of the additional local sales and use tax, the same shall be effective as provided by Subsection K of this Section.

G. In any city in which an additional local sales and use tax has been imposed in the manner provided for herein, in the same manner and by the same procedure such city by majority vote of the qualified voters of said city voting at an election held for that purpose may abolish such tax. ~~[The governing body of a city that has adopted the additional tax authorized by this Section shall call an election on the question of the abolition of the additional tax no later than ten (10) years from the date of the last preceding election on the adoption or abolition of the additional tax.]~~ The ballot for any such election shall be printed to provide for voting for or against the following proposition:

"The abolition of the additional local sales and use tax within the city."

If a majority of the votes cast at any such election be in favor of the abolition of such tax, such additional local sales and use tax shall be thereby abolished in the city as

follows: There shall elapse one whole calendar quarter after the Comptroller receives the notice of abolition of the tax, after which the additional local sales and use tax shall be abolished in the city beginning on the first day of the first calendar year next succeeding the elapsed quarter.

L. (1) The receipts from the sale, use, or rental of and the storage, use, or consumption of taxable items in this State are exempt from the additional tax imposed by a city under this Section if the items are used:

(a) for the performance of a written contract entered into prior to the date the additional tax takes effect in the city, if the contract is not subject to change or modification by reason of the tax; or

(b) pursuant to an obligation of a bid or bids submitted prior to the date the additional tax takes effect in the city, if the bid or bids may not be withdrawn, modified, or changed by reason of the tax.

(2) The exemptions provided by this Section have no effect after three (3) years from the date the additional tax takes effect in the city.

SECTION 2. Subsection A, Section 4, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Except as provided in Subsection D of this Section, in every city where the local sales and use tax has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such city of tangible personal property purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption in such city at the rate of one percent (1%), or one and one-half percent (1-1/2%) if the tax under Section 2A of this Act has been adopted, of the sales price of the property or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subsection E of this Section, the local use tax is not owed to and may not be collected by, for, or in behalf of a city if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the State under the Limited Sales, Excise and Use Tax Act or if the tangible personal property is first stored, used, or consumed within a city or area that has not adopted the local sales or use tax. For the purpose of determining the proper sales tax under this Act and the proper excise tax on the use, storage, or other consumption of taxable items under Section 2A of this Act:

(1) if a taxable item is used, stored, or otherwise consumed in a city that has adopted the tax imposed by Section 2A of this Act, the provisions of [~~Paragraphs (a), (b), (c), and (d), Subdivision 1, Subsection B,~~] Section 6[~~7~~], of this Act are applicable; and

(2) if the sales tax applies in a city that has not adopted the tax imposed under Section 2A of this Act, the excise tax on the use, storage, or other consumption of the taxable item does not apply.

SECTION 3. Section 9, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) In each year in which a city imposes an additional city sales and use tax under Section 2A of this Act, if the revenue from the collection of the additional tax exceeds the amount of taxes calculated for the city under Section 26.04(c), Tax Code, *except for the amount required to be deposited in a special account under Subsection (c) of this section*, the excess shall be deposited in an account to be called the city sales tax debt service fund. Revenue deposited in the city sales tax debt service fund may be spent only for the reduction of lawful debts of the city, except that deposits that exceed the amount of revenue needed to pay the debt service needs of the city in the current year may be used for any city purpose consistent with the city budget.

(c) *Revenue from the collection of the additional tax imposed under Section 2A of this Act in each of the first three years in which the tax is imposed in the city in excess of the amount determined as provided by Section 26.041(c), Tax Code, for each year shall be deposited in an account to be called the excess sales tax revenue fund. During those three years, revenue deposited in the excess sales tax revenue fund may*

be spent only if and to the extent that taxes or other revenues of the city are collected in amounts less than anticipated. After that period, the revenue in the fund may be used for any city purpose consistent with the city budget. The fund ceases to exist when all revenue deposited in the fund has been spent. This subsection does not apply to a city that does not impose a property tax.

SECTION 4. The County Sales and Use Tax Act (Article 2353e, Vernon's Texas Civil Statutes) is amended by adding Section 26A to read as follows:

Sec. 26A. (a) The receipts from the sale, use, or rental of and the storage, use, or consumption of taxable items in this state are exempt from the tax imposed by a county under this Act if the items are used:

(1) for the performance of a written contract entered into prior to the date the tax takes effect in the county, if the contract is not subject to change or modification by reason of the tax; or

(2) pursuant to an obligation of a bid or bids submitted prior to the date the tax takes effect in the county, if the bid or bids may not be withdrawn, modified, or changed by reason of the tax.

(b) The exemptions provided by this section have no effect after three years from the date the tax takes effect in the county.

SECTION 5. Sections 28 and 29, County Sales and Use Tax Act (Article 2353e, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 28. Each county's share of all county sales and use tax collected under this Act by the comptroller shall be transmitted to the county treasurer by the comptroller payable to the county periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. Before transmitting any funds collected under this Act to a county, the comptroller shall deduct two percent of the total amount collected from each county as a charge by the State of Texas for its services specified in this Act, and the amounts so deducted, subject to the provisions for expenditures for bond premiums, shall be deposited by the comptroller in the state treasury to the credit of the general revenue fund of the state. The comptroller is authorized to retain in the suspense account of any county a portion of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent of the amount remitted to the county. The comptroller is authorized to make refunds from the suspense account of any county for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the proper suspense accounts. When any county shall adopt the county sales and use tax and shall thereafter abolish such tax, the comptroller may retain in the suspense account of such county for a period of one year five percent of the final remittance to each such county at the time of termination of collection of such tax in the county to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in the county, the comptroller shall remit the balance in such account to the county and close the account. *Interest earned on all deposits made with the state treasurer under this Act, including interest earned from the suspense accounts retained under this section, shall be credited to the general revenue fund.*

Sec. 29. (a) Money collected under this Act is for the use and benefit of the county to which the funds are distributed and shall be used for the replacement of property tax revenue lost as a result of the adoption of the taxes authorized by this Act. *Except as provided by Subsection (b) of this section, the [The] revenue in excess of the revenue used to replace those property taxes shall be used for the reduction of indebtedness of the county. After all indebtedness is paid, the excess may be used for any purpose for which county general revenue may be used. A county may not pledge anticipated revenue from this source to secure the payment of bonds or other indebtedness for a period longer than one year.*

(b) Revenue collected from the tax imposed under this Act in each of the first three years in which the tax is imposed in the county in excess of the amount determined as provided by Section 26.042(c), Tax Code, for each year shall be deposited in an account to be called the excess sales tax revenue fund. During those three years, revenue

deposited in the excess sales tax revenue fund may be used only if and to the extent that taxes or other revenues of the county are collected in amounts less than anticipated. After that period, the revenue in the fund may be used for any purpose for which county general revenue may be used. The fund ceases to exist when all revenue deposited in the fund has been spent.

SECTION 6. Subsection (g), Section 8, Article 1118z, Revised Statutes, is amended by adding Subdivisions (6) and (7) to read as follows:

(6) The receipts from the sale, use, or rental of and the storage, use, or consumption of taxable items in this state are exempt from the tax imposed under this article if the items are used:

(A) for the performance of a written contract entered into prior to the date the tax takes effect in the city, if the contract is not subject to change or modification by reason of the tax; or

(B) pursuant to an obligation of a bid or bids submitted prior to the date the tax takes effect in the city, if the bid or bids may not be withdrawn, modified, or changed by reason of the tax.

(7) The exemptions provided by Subdivision (6) of this subsection have no effect after three years from the date the tax takes effect in the city.

SECTION 7. Subsections (j) and (l), Section 8, Article 1118z, Revised Statutes, are amended to read as follows:

(j) Unless inconsistent with this article, the [The] following provisions govern the collection by the comptroller of the tax imposed under this section:

- (1) all applicable provisions contained in Title 2, Tax Code;*
- (2) Section 6, Local Sales and Use Tax Act; and*
- (3) the penalties provided in Title 2, Tax Code, for violations of that title.*

(l) Each department's share of all sales and use taxes collected under this section by the comptroller shall be transmitted periodically and as promptly as feasible to the city treasurer by the comptroller. Transmittals required under this section shall be made at least twice in each state fiscal year. Before transmitting funds, the comptroller shall deduct two percent of the sum collected from each city or town during the period as a charge by the state for its services specified in this section, and the amounts so deducted shall be deposited by the comptroller in the state treasury to the credit of the general revenue fund. The comptroller may retain in the suspense account of any department a portion of the department's share of the taxes collected under this section. The balance so retained in the suspense account may not exceed five percent of the amount remitted to the department. The comptroller is authorized to make refunds from the suspense account of any department for overpayments made to the department's accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of the department. Interest earned on all deposits made with the state treasurer under this Act, including interest earned from the suspense funds retained under this section, shall be credited to the general revenue fund.

SECTION 8. Section 11B(B)(c)(6), Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) There are exempted from the sales taxes imposed by this article receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside the authority area by the retailer by means of:

- (a) facilities operated by the retailer;*
- (b) delivery by the retailer to a carrier for shipment to a consignee at such point; or*
- (c) delivery by the retailer to a customs broker or forwarding agent for shipment outside the authority.*

If the tangible personal property exempted under this subparagraph, [or] under Paragraph (F) of Section 16(f)(2) of Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), or under Section 8(g)(2),

Article 1118z, Revised Statutes, is shipped or delivered directly to a purchaser in another city, town, or authority that has adopted the taxes imposed under *any of those laws [either article]*, the tangible personal property is subject to the use tax imposed by Subsection (A) of this section.

SECTION 9. Section 16(f)(2)(F), Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is amended to read as follows:

(F) There are exempted from the sales taxes imposed by this article receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside the authority area by the retailer by means of:

- (a) facilities operated by the retailer;
- (b) delivery by the retailer to a carrier for shipment to a consignee at such point; or
- (c) delivery by the retailer to a customs broker or forwarding agent for shipment outside the authority.

If the tangible personal property exempted under this paragraph, [ø] under Subparagraph (6) of Section 11B(B)(c) of Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973[, as amended] (Article 1118x, Vernon's Texas Civil Statutes), or under Section 8(g)(2), Article 1118z, Revised Statutes, is shipped or delivered directly to a purchaser in another city, town, or authority that has adopted the taxes imposed by *any of those laws [either article]*, the tangible personal property is subject to the use tax imposed by Subdivision (1) of Subsection (f) of this section.

SECTION 10. Subsection (c), Section 3.051, Chapter 240, Acts of the 69th Legislature, Regular Session, 1985 (Article 4393-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Interest that has been and that will be accrued or earned from *deposits made under a law listed in this subsection is state funds not subject to allocation or distribution to taxing units, cities, or transportation authorities under that law. This subsection applies to deposits made under:*

- (1) Section 205.02, Alcoholic Beverage Code;
- (2) Section 26, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);
- (3) Section (d), Article 4366e, Revised Statutes;
- (4) Section 7 or Subsection (a), Section 8, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes);
- (5) Paragraph (4), Subdivision (e) or Subdivision (f), Subsection B, Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes);
- (6) [ø] Paragraph (D), Subdivision (4) or Subdivision (5), Subsection (f), Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes);
- (7) Section 8(l), Article 1118z, Revised Statutes; or
- (8) Section 28, County Sales and Use Tax Act (Article 2353e, Vernon's Texas Civil Statutes)[, is state funds not subject to allocation or distribution to taxing units, cities, or transportation authorities under those laws].

SECTION 11. Section 26.041, Tax Code, is amended to read as follows:

Sec. 26.041. TAX RATE OF CITY IMPOSING ADDITIONAL SALES AND USE TAX. (a) In each tax year in which a city imposes an additional sales and use tax under Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), the [governing body may not adopt a tax rate that exceeds the tax rate calculated under Section 26.04 of this code and adjusted under this section by more than three percent. The governing body shall reduce a tax rate set by law or by vote of the electorate to a rate that does not exceed the rate permitted by this subsection. In a year in which this subsection applies, Sections 26.05(e), 26.06, and 26.07 of this code do not apply to the city.

[(b) The] officer or employee designated to make the calculations provided by Section 26.04 of this code for a city shall adjust the tax rate calculated under that section as

provided by Subsection (b) [(e)] or (e) of this section, as applicable. *In a tax year to which this section applies, a reference in Section 26.05, 26.06, or 26.07 of this code to the tax rate calculated for the city under Section 26.04 of this code refers to that rate as adjusted under this section.*

(b) [(e)] In each tax year in which a city imposes an additional sales and use tax under Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes):

(1) if the amount of additional tax to be imposed in the current year as determined under Subsection (c) [(d)] of this section exceeds the amount of additional tax, if any, used for purposes of this section in the preceding year as determined under Subsection (c) [(d)] in that year, the officer or employee shall subtract from the rate calculated for the city under Section 26.04 of this code the rate that, if applied to the total taxable value submitted to the governing body, would impose taxes equal to the amount by which the amount of additional tax to be imposed in the current year exceeds the amount of additional tax used in the preceding year; or

(2) if the amount of additional tax to be imposed in the current year as determined under Subsection (c) [(d)] of this section is less than the amount of additional tax, if any, used for purposes of this section in the preceding year as determined under Subsection (c) [(d)] in that year, the officer or employee shall add to the rate calculated for the city under Section 26.04 of this code the rate that, if applied to the total taxable value submitted to the governing body, would impose taxes equal to the amount by which the amount of additional tax used in the preceding year exceeds the amount of additional tax to be imposed in the current year.

(c) [(d)] In order to determine the amount of additional city sales and use tax revenue for purposes of this section, the designated officer or employee shall use the city sales and use tax revenue for the last preceding four quarters for which the information is available as the basis for projecting the additional sales and use tax revenue for the current tax year. If the city did not impose a sales and use tax under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes) for the last preceding four quarters, the designated officer or employee shall request the comptroller of public accounts to provide to the officer or employee a report showing the estimated amount of taxable sales and uses within the city for the previous four quarters as compiled by the comptroller, and the comptroller shall comply with the request. The city officer or employee shall prepare *the* [an] estimate of the city additional sales and use tax revenue for the first year of the imposition of the tax by multiplying the amount reported by the comptroller by the additional tax rate under Section 2A, Local Sales and Use Tax Act. *For the first, second, and third years in which a city imposes the additional sales and use tax, the officer or employee shall multiply the amount of revenue as otherwise determined under this subsection by nine-tenths.*

(d) *If during any one-year period the legislature enacts one or more amendments to Chapter 151, Tax Code, that result in an increase in the total taxable value of the sale, use, storage, and other consumption of all items subject to the state sales and use tax by 10 percent or more as determined by the comptroller, the comptroller shall provide for the adjustment of the revenue estimates made under Subsection (c) of this section taking into account the additional revenue estimated to be collected by the city under Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), because of the increase in the sales tax base, and by multiplying that product by .95.*

(e) A city that imposes an additional sales and use tax under Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), in a tax year qualifies in that tax year for the effective tax rate adjustment provided by this subsection if the city receives payments under the terms of a contract executed before January 1, 1986, in which the city agrees not to annex certain property or a certain area and the owners or lessees of the property or of property in the area agree to pay at least annually to the city an amount determined by reference to all or a percentage of the property tax rate of the city and all or a part of the value of the property subject to the agreement or included in the area subject to the agreement. The governing body of a qualifying city, by order adopted by a majority vote of the governing body, may direct the designated officer or

employee to add to the tax rate calculated under Section 26.04 of this code and adjusted under Subsection (b) of this section the amount that, when applied to the total taxable value submitted to the governing body, would produce an amount of taxes equal to the difference between the total amount of payments for the tax year under contracts described by this subsection under the tax rate calculated under Section 26.04 and adjusted under Subsection (b) of this section and the total amount of payments for the tax year that would have been obligated to the city if the city had not adopted an additional sales and use tax under Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

SECTION 12. Section 26.042, Tax Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In order to determine the amount of sales and use tax revenue for purposes of this section, the designated officer or employee shall use the county sales and use tax revenue for the last preceding four quarters for which the information is available as the basis for projecting sales and use tax revenue for the current tax year. If the county did not impose a sales and use tax for the preceding four quarters, the designated officer or employee shall request the comptroller of public accounts to provide to the officer or employee a report showing the estimated amount of taxable sales and uses within the county for the previous four quarters as compiled by the comptroller, and the comptroller shall comply with the request. The county officer or employee shall prepare an estimate of the county sales and use tax for the first year of the imposition of the tax by multiplying the amount reported by the comptroller by the county sales and use tax rate. *For the first, second, and third years in which a county imposes a county sales and use tax, the officer or employee shall multiply the amount of revenue as otherwise determined under this subsection by nine-tenths.*

(d) *The calculations required under Subsection (c) need not take into account any projections of additional revenue attributable to increases in the total value of items taxable under the state sales and use tax due to amendments to Chapter 151, Tax Code.*

SECTION 13. Section 31.01, Tax Code, is amended by adding Subsection (i) to read as follows:

(i) *For a city or town that imposes an additional sales and use tax under Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), or a county that imposes a sales and use tax under the County Sales and Use Tax Act (Article 2353e, Vernon's Texas Civil Statutes), the tax bill shall indicate the amount of additional ad valorem taxes, if any, that would have been imposed on the property if additional ad valorem taxes had been imposed in an amount equal to the amount of revenue estimated to be collected from the additional city sales and use tax for the year determined as provided by Section 26.041(c) of this code or from the county sales and use tax for the year determined as provided by Section 26.042(c) of this code, as applicable.*

SECTION 14. The exemptions provided by Subsection L, Section 2A, Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes), Section 26A, County Sales and Use Tax Act (Article 2353e, Vernon's Texas Civil Statutes), and Section 8(g)(6), Article 1118z, Revised Statutes, as added by this Act, apply to a tax even if the election to adopt the tax is held before the effective date of this Act.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 18, 1987, by the following vote: Yeas 28, Nays 0; and that the Senate concurred in House amendments on April 1, 1987, by the following vote: Yeas 31, Nays 0. Passed the House, with amendments, on April 1, 1987, by the following vote: Yeas 137, Nays 2, one present not voting.

Approved April 2, 1987.

Effective April 2, 1987.