

BILL ANALYSIS

C.S.H.B. 3174
By: Button
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that each transaction involving the sale of software used for Internet hosting services, first to the hosting company and then to the end user, includes the application of sales tax, which subjects the same product to double taxation. The parties suggest that this double taxation places Texas at a competitive disadvantage with regard to attracting and retaining Internet hosting companies. C.S.H.B. 3174 seeks to resolve this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3174 amends the Tax Code to include in a sale for resale, as it relates to the sales and use tax, the sale of a computer program to a provider of Internet hosting who acquires the computer program from an unrelated vendor for the purpose of selling the right to use the computer program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the computer program. The bill specifies that, for such purpose, the purchase of the computer program by the provider qualifies as a sale for resale only if the provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor and executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware. The bill applies if the unrelated user purchases the right to use the computer program from the provider through the acquisition of a license and the provider does not retain the right to use the computer program under that license, regardless of the performance by the provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3174 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial

differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 151.006, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A sale for resale includes the sale of a computer program to a provider of Internet hosting who acquires the computer program for the purpose of selling the right to use the computer program to an unrelated user of Internet hosting services.

Notwithstanding Section 151.302(b), this subsection applies regardless of whether the unrelated user of Internet hosting services purchases the right to use the computer program from the provider of Internet hosting through the acquisition of a license, for a fee without a license, or as part of a service.

In this subsection, "Internet hosting" has the meaning assigned by Section 151.108(a).

SECTION 2. The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That 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. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 151.006, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A sale for resale includes the sale of a computer program to a provider of Internet hosting who acquires the computer program from an unrelated vendor for the purpose of selling the right to use the computer program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the computer program. For purposes of this subsection, the purchase of the computer program by the provider qualifies as a sale for resale only if the provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor and executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware. This subsection applies notwithstanding Section 151.302(b), if the unrelated user purchases the right to use the computer program from the provider through the acquisition of a license and the provider does not retain the right to use the computer program under that license. The performance by the provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of this subsection. In this subsection, "Internet hosting" has the meaning assigned by Section 151.108(a).

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.