

SUBJECT: Collection and allocation of certain local sales and use taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, P. King, Paxton, Peña, Taylor, Villarreal

0 nays

1 absent — C. Howard

SENATE VOTE: On final passage, April 30 — 31-0

WITNESSES: For — John Kroll, Coalition for Appropriate Sales Tax Law Enactment; (*Registered, but did not testify:* Chris Shields, Fort Worth Transit Authority)

Against — None

BACKGROUND: The amount of applicable sales tax due on a sale is determined by where in the state the sale occurred. Under Tax Code, sec. 151.051, the state collects a standard six and one quarter percent sales tax. Under ch. 321 and ch. 323, local governmental entities may collect up to an additional two percent. Since the taxes collected by local governments vary, the location of a sale not only determines the amount of the tax but also which entities receive the tax revenues.

DIGEST: SB 1202 would amend Tax Code, sec. 321.203 and sec. 323.203 to fix the geographic location of a sale for businesses with more than one location in Texas for purposes of computing and attributing municipal and county sales taxes according to one of the following two sets of criteria:

Initial taxable location. If a retailer had more than one place of business in this state, each sale of each taxable item would be taxed at the place of business of the retailer in Texas where the retailer first received the order, provided that the order was placed in person at the place of business of the retailer in Texas where the retailer first received the order.

The above criteria would not apply if:

- the taxable item was shipped or delivered from a warehouse:
 - that was a place of business of the retailer, in relation to which the retailer had an economic development agreement with a municipality or a county in existence before January 1, 2009; and
 - the municipality or the county provided information relating to the economic development agreement with the municipality or county regarding as prescribed to the comptroller;
- the place of business of the retailer at which the retailer first received the order was a retail outlet being served by the warehouse on January 1, 2009.

These provisions would expire on September 1, 2014. They would take immediate effect if the bill finally passed by a two-thirds record vote of the membership of each house. Otherwise, they would take effect August 31, 2009.

Not later than September 1, 2009, a municipality that had entered into an economic development agreement would be required to send to the comptroller information relating to the agreement that identified the warehouses subject to the agreement and each retail outlet that, on January 1, 2009, was served by that warehouse. The provision of information to the comptroller would not affect whether the information was confidential or excepted from required public disclosure. These provisions would expire on September 1, 2014. They would take immediate effect if the bill finally passed by a two-thirds record vote of the membership of each house. Otherwise, they would take effect August 31, 2009.

Alternative taxable location. If the retailer had more than one place of business in Texas and the first formula did not apply, the sale would be taxable at the place of business of the retailer in Texas:

- from which the retailer shipped or delivered the item, if the retailer shipped or delivered the item to a point designated by the purchaser or lessee; or
- where the purchaser or lessee took possession of and removed the item, if the purchaser or lessee took possession of and removed the item from the place of business of the retailer.

Kiosks. SB 1202 would amend Tax Code, sec. 321.002, to remove kiosks from the definition of a “place of business of the retailer” when determining the location at which a sales or use tax would apply. A “kiosk” would be defined as a small stand-alone area or structure that:

- was used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;
- was located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall; and
- where taxable items were not available for immediate delivery to a customer.

The bill would take effect September 1, 2009.