

BILL ANALYSIS

Senate Research Center

S.B. 636
By: Seliger
Economic Development
9/1/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, only municipalities can request certain sales tax revenue information from the comptroller of public accounts (comptroller).

S.B. 636 relates to the imposition of the franchise tax and local sales and use taxes, including the authority of a county or other local government entity to receive local sales tax information.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.027(c), Tax Code, to provide that this section does not prohibit certain actions, including the delivery of information to a municipality, county, or other local governmental entity, rather than an eligible municipality, in accordance with Section 321.3022 (Tax Information), 322.2022, or 323.3022.

SECTION 2. Amends Subchapter C, Chapter 151, Tax Code, by adding Section 151.0565, as follows:

Sec. 151.0565. TAXABLE ITEMS SOLD OR PROVIDED UNDER DESTINATION MANAGEMENT SERVICES CONTRACTS. (a) Defines "destination management services," "qualified destination management company," and "qualified destination management services contract," in this section.

(b) Provides that a qualified destination management company is the consumer of taxable items sold or otherwise provided under a qualified destination management services contract, and the destination management services provided under the contract are not considered taxable services, as that term is defined by Section 151.0101 (Taxable Services).

SECTION 3. (a) Amends Section 171.1011, Tax Code, by adding Subsection (g-6), as follows:

(g-6) Requires a taxable entity that is a qualified destination management company as defined by Section 151.0565 to exclude from its total revenue, to the extent included under Subsection (c)(1)(A) (relating to a taxable entity treated for federal income tax purposes as a corporation), (c)(2)(A) (relating to a taxable entity treated for federal income tax purposes as a partnership), or (c)(3) (relating to a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation or partnership), payments made to other persons to provide services, labor, or materials in connection with the provision of destination management services as defined by Section 151.0565.

(b) Provides that this section applies only to a report originally due on or after the effective date of this section.

(c) Effective date, this section: notwithstanding any other provision of this Act, January 1, 2010.

SECTION 4. Amends Section 321.002(a)(3), Tax Code, to define "place of business of the retailer" and "kiosk."

SECTION 5. Amends Section 321.203, Tax Code, by amending Subsections (c) and (d) and adding Subsections (c-1), (c-2), and (c-3), as follows:

(c) Provides that if a retailer has more than one place of business in this state, each sale of each taxable item, rather than a sale of a taxable item, by the retailer is consummated at the place of business of the retailer, rather than the retailer's place of business, in this state where the retailer first receives the order, provided that the order is placed in person by the purchaser or lessee of the taxable item at the place of business of the retailer in this state where the retailer first receives the order.

(c-1) Provides that if the retailer has more than one place of business in this state and Subsection (c) does not apply, the sale is consummated at the place of business of the retailer in this state:

(1) from which the retailer ships or delivers the item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

(c-2) Provides that Subsection (c) does not apply if:

(1) the taxable item is shipped or delivered from a warehouse that meets certain conditions; and

(2) the place of business of the retailer at which the retailer first receives the order in the manner described by Subsection (c) is a retail outlet identified in the information required by Subsection (c-3) or Section 323.203(c-3) as being served by the warehouse on January 1, 2009.

(c-3) Requires a municipality that has entered into an economic development agreement described by Subsection (c-2), not later than September 1, 2009, to send to the comptroller of public accounts (comptroller) information prescribed by the comptroller relating to the agreement that identifies each warehouse subject to the agreement and each retail outlet that, on January 1, 2009, was served by that warehouse. Requires the comptroller to prescribe the manner in which the information must be provided. Provides that the provision of information to the comptroller under this subsection does not affect whether information described by this subsection is confidential or excepted from required public disclosure. Provides that this subsection and Subsection (c-2) expire September 1, 2014.

(d) Provides that if the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply, rather than if neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state, the sale is consummated at:

(1) the place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates. Makes a conforming change.

SECTION 6. Amends Section 321.3022, Tax Code, by amending Subsections (a), (a-1), (b), (d), (e), (f), (g), (h), and (i) and adding Subsection (a-2), as follows:

(a) Defines "other local governmental entity" in this section.

(a-1) Requires the comptroller on request, except as otherwise provided by this section, to provide to a municipality or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

(a-2) Requires the comptroller on request to provide to a municipality or other local governmental entity that has adopted a tax under this chapter and that does not impose an ad valorem tax information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$500. Makes a nonsubstantive change.

(b) Requires the comptroller on request to provide to a municipality or other local governmental entity that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the municipality or other local governmental entity, that is part of:

(1) an interlocal agreement;

(2) a tax abatement agreement;

(3) a reinvestment zone;

(4) a tax increment financing district;

(5) a revenue sharing agreement;

(6) an enterprise zone;

(7) a neighborhood empowerment zone;

(8) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(7); or

(9) any area defined by the municipality or other local governmental entity for the purpose of economic forecasting.

(d) Requires the comptroller, if the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter, to refuse to provide the information to the municipality or other local governmental entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the municipality or other local governmental entity as requested.

(e) Requires that a separate request for information under this section be made in writing by the municipality's mayor or chief administrative officer or by the governing body of the other local governmental entity each year.

(f) Provides that information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and is authorized to be used only for the purpose of economic forecasting, for internal auditing of a tax

paid to the municipality or other local governmental entity under this chapter, or for the purpose described in Subsection (g).

(g) Authorizes information received by a municipality or other local governmental entity under Subsection (b) to be used by the municipality or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(h) Authorizes the comptroller to set and collect from a municipality or other local governmental entity reasonable fees to cover the expense of compiling and providing information under this section.

(i) Provides that notwithstanding Chapter 551 (Open Meetings), Government Code, the governing body of a municipality or other local governmental entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the municipality or other local governmental entity under this section.

SECTION 7. Amends Subchapter C, Chapter 322, Tax Code, by adding Section 322.2022, as follows:

Sec. 322.2022. TAX INFORMATION. (a) Requires the comptroller on request, except as otherwise provided by this section, to provide to a taxing entity:

(1) information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in the area included in the entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

(b) Requires the comptroller on request to provide to a taxing entity information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in an area included in the entity, as defined by the entity, that is part of:

(1) an interlocal agreement;

(2) a revenue sharing agreement;

(3) any other agreement similar to those listed in Subdivisions (1) and (2);
or

(4) any area defined by the entity for the purpose of economic forecasting.

(c) Requires the comptroller to provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments.

(d) Requires the comptroller to refuse to provide the information to the taxing entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the entity as requested, if the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter.

(e) Requires that a separate request for information under this section be made in writing by the governing body of the taxing entity each year.

(f) Provides that information received by a taxing entity under this section is confidential, is not open to public inspection, and may be used only for the

purpose of economic forecasting, for internal auditing of a tax paid to the entity under this chapter, or for the purpose described by Subsection (g).

(g) Authorizes information received by a taxing entity under Subsection (b) to be used by the entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(h) Authorizes the comptroller to set and collect from a taxing entity reasonable fees to cover the expense of compiling and providing information under this section.

(i) Provides that notwithstanding Chapter 551, Government Code, the governing body of a taxing entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the entity under this section.

SECTION 8. Amends Section 323.203, Tax Code, by amending Subsections (c) and (d) and adding Subsections (c-1), (c-2), and (c-3), as follows:

(c) Provides that if a retailer has more than one place of business in this state, each sale of each taxable item by the retailer is consummated at the place of business of the retailer in this state where the retailer first receives the order, provided that the order is placed in person by the purchaser or lessee of the taxable item at the place of business of the retailer in this state where the retailer first receives the order. Makes conforming changes.

(c-1) Provides that if the retailer has more than one place of business in this state and Subsection (c) does not apply, the sale is consummated at the place of business of the retailer in this state:

(1) from which the retailer ships or delivers the item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

(c-2) Provides that Subsection (c) does not apply if:

(1) the taxable item is shipped or delivered from a warehouse that meets certain conditions; and

(2) the place of business of the retailer at which the retailer first receives the order in the manner described by Subsection (c) is a retail outlet identified in the information required by Subsection (c-3) or Section 321.203(c-3) as being served by the warehouse on January 1, 2009.

(c-3) Requires a county that has entered into an economic development agreement described by Subsection (c-2), not later than September 1, 2009, to send to the comptroller information prescribed by the comptroller relating to the agreement that identifies each warehouse subject to the agreement and each retail outlet that, on January 1, 2009, was served by that warehouse. Requires the comptroller to prescribe the manner in which the information must be provided. Provides that the provision of information to the comptroller under this subsection does not affect whether information described by this subsection is confidential or excepted from required public disclosure. Provides that this subsection and Subsection (c-2) expire September 1, 2014.

(d) Provides that if the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply, rather than if neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state, the sale is consummated at:

- (1) the place of business of the retailer in this state where the order is received; or
- (2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates. Makes a conforming change.

SECTION 9. Amends Subchapter D, Chapter 323, Tax Code, by adding Section 323.3022, as follows:

Sec. 323.3022. TAX INFORMATION. (a) Defines "other local governmental entity" in this section.

(b) Requires the comptroller on request, except as otherwise provided by this section, to provide to a county or other local governmental entity that has adopted a tax under this chapter:

- (1) information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in the area included in the county or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

- (2) any other information as provided by this section.

(c) Requires the comptroller on request to provide to a county or other local governmental entity that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the county or other local governmental entity, that is part of:

- (1) an interlocal agreement;

- (2) a tax abatement agreement;

- (3) a reinvestment zone;

- (4) a tax increment financing district;

- (5) a revenue sharing agreement;

- (6) an enterprise zone;

- (7) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(6); or

- (8) any area defined by the county or other local governmental entity for the purpose of economic forecasting.

(d) Requires the comptroller to provide the information under Subsection (c) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments.

(e) Requires the comptroller to refuse to provide the information to the county or other local governmental entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the county or other local governmental entity as requested, if the request for information under Subsection (c) involves not more than three persons doing business in the defined area who remit taxes under this chapter.

(f) Requires that a separate request for information under this section be made in writing each year by the county judge or by the governing body of the other local governmental entity.

(g) Provides that information received by a county or other local governmental entity under this section is confidential, is not open to public inspection, and is authorized to be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the county or other local governmental entity under this chapter, or for the purpose described in Subsection (h).

(h) Authorizes information received by a county or other local governmental entity under Subsection (c) to be used by the county or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(i) Authorizes the comptroller to set and collect from a county or other local governmental entity reasonable fees to cover the expense of compiling and providing information under this section.

(j) Provides that notwithstanding Chapter 551 (Open Meetings), Government Code, the commissioners court of a county or the governing body of the other local governmental entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the county or other local governmental entity under this section.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date, Sections 321.203 and 323.203, Tax Code: upon passage or August 31, 2009.

SECTION 12. Effective date: except as otherwise provided by this Act, September 1, 2009.