

BILL ANALYSIS

Senate Research Center
82R7201 MXM-D

H.B. 1841
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A company with a "nexus," or physical presence, in Texas that makes sales in Texas is required to collect sales tax from its customers and remit that tax to the state. A United States Supreme Court ruling in the early 1990s affirmed a previous ruling that prohibited states from compelling out-of-state companies to collect sales tax in violation of the United States Constitution's commerce clause. A "substantial nexus," such as owning a building or employing sales staff in a state, is required before states can impose tax collection duties on out-of-state companies.

In the late 1990s, an Internet tax policy working group convened by the comptroller of public accounts made certain recommendations to the state regarding the maintenance of a fair and competitive environment for electronic commerce. The group advised that the use of an Internet site, if hosted from a server located in Texas, should not constitute nexus. Despite that conclusion, interested parties contend that the state's commitment to this nexus standard has been questioned, raising the concern that out-of-state companies will abandon Texas-based Internet hosting businesses out of fear that they will be required to collect or pay the state sales tax. Texas-based hosting companies currently pay substantial state sales tax on purchases of hardware, software, and electricity, but may be forced to scale back those purchases if customers choose to avoid Texas-based hosting sites.

H.B. 1841 seeks to affirm the state's commitment to the nexus standard by clarifying the taxability of Internet hosting.

H.B. 1841 amends current law relating to the taxability of Internet hosting.

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 Subchapter D, Chapter 151, Tax Code, by adding Section 151.108, as follows:

- Sec. 151.108. INTERNET HOSTING. (a) Defines, in this section, "Internet hosting."
- (b) Provides that a person whose only activity in this state is conducted as a user of Internet hosting is not engaged in business in this state.
- (c) Provides that a person providing Internet hosting is not required to examine a user's data to determine the applicability of this chapter to a user, report to the comptroller of public accounts about a user's activities, or advise a user as to the applicability of this chapter.

SECTION 2. Effective date: upon passage or September 1, 2011.