

BILL ANALYSIS

C.S.H.B. 3406
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, small businesses in Texas are frequently the target of tax collectors in other states. Texas businesses who sell products and ship them to consumers in other states often find themselves the target of legal proceedings initiated by other state governments. Currently, distant states may sue a Texas company for the non-collection of sales and use tax owed by consumers who are residents of that state. In cases where the Texas company has a physical presence, or nexus, in that state, the Texas company has an obligation under that state's laws to collect and remit that state's sales and use tax accordingly.

Section 8, Article I of the United States Constitution specifically designates Congress as having authority over interstate commerce. Many small businesses do not have nexus outside of Texas and therefore have no obligation to know what the appropriate sales and use tax laws of another state might be or to collect sales and use tax on behalf of that state from their customers. This legal precedent was established by the U.S. Supreme Court in *North Dakota v. Quill*.

However, Texas companies sued on these ground must often, at great expense, travel to another state and hire local counsel to defend themselves and prove their innocence. This creates a hardship for Texas companies who must go to another state to prove that they do not have nexus in that state and therefore, under *Quill*, have no legal authority or ability to collect that states sales and use tax.

C.S.H.B. 3406 provides relief to Texas companies from the long arm jurisdiction of other state courts on nexus and sales and use tax matters. C.S.H.B. 3406 allows a Texas company who has been sued by another state on sales and use tax collection matters to seek declaratory relief from a local district court by granting the local district court original jurisdiction over the nexus issue proceedings. The district court must rely on the specific circumstances of the Texas business, claim by another state, Section 8, Article I of the U.S. Constitution and applicable court precedents in making its decision to award declaratory relieve.

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. 3406 provides that a district court has original jurisdiction of a proceeding seeking a declaratory judgment that involves: (1) a party seeking declaratory relief that is a business that is:

(A) organized under the laws of this state or is otherwise owned by a resident of this state; or

(B) otherwise qualified to do business in this state; and

(2) a responding party that:

(A) is an official of another state; and

(B) asserts a claim that the party seeking declaratory relief is required to collect sales or use taxes for that state based on conduct of the business that occurs in whole or in part within this state.

The bill provides that such a business is entitled to declaratory relief on the issue of whether the requirement of another state that the business collect and remit sales or use taxes to that state

constitutes an undue burden on interstate commerce under Section 8, Article I, United States Constitution.

The bill requires a court, in determining whether to grant declaratory relief to a business under this section, to consider: (1) the factual circumstances of the business's operations that give rise to the demand by the other state; and (2) the decisions of other courts interpreting Section 8, Article I, United States Constitution.

EFFECTIVE DATE

September 1, 2005. The Act applies to a cause of action that accrues on or after September 1, 2005. A cause of action that accrues before September 1, 2005 is governed by the law in effect at the time the action accrued, and the former law is continued in effect for that purpose.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes language defining "nexus" and "state." The substitute differs from the original bill by making the changes statutory in the Civil Practice and Remedies Code. The substitute removes language (1) providing that a business is not liable for the collection and remittance of sales and use taxes to this state unless the business has sufficient nexus to this state and (2) setting forth factors that indicate that a business has sufficient nexus for purposes of this Act.