

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 27, 2005**

**TO:** Honorable Jim Keffer, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB3406** by Rose (Relating to the collection of sales or use taxes by certain businesses.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3406, As Introduced: a negative impact of (\$1,383,683,000) through the biennium ending August 31, 2007.

**General Revenue-Related Funds, Five-Year Impact:**

| Fiscal Year | Probable Net Positive/(Negative)<br>Impact to General Revenue Related<br>Funds |
|-------------|--|
| 2006        | (\$645,570,000)  |
| 2007        | (\$738,113,000)  |
| 2008        | (\$774,447,000)  |
| 2009        | (\$808,528,000)  |
| 2010        | (\$848,720,000)  |

**All Funds, Five-Year Impact:**

| Fiscal Year | Probable Revenue<br>Gain/(Loss) from<br><i>GENERAL REVENUE<br/>FUND<br/>1</i> | Probable Revenue<br>Gain/(Loss) from<br><i>Cities</i> | Probable Revenue<br>Gain/(Loss) from<br><i>Transit Authorities</i> | Probable Revenue<br>Gain/(Loss) from<br><i>Counties/SPDs</i> |
|-------------|---|---|--|--|
| 2006        | (\$645,570,000)   | (\$109,324,000)                                       | (\$37,607,000)   | (\$13,604,000)   |
| 2007        | (\$738,113,000)   | (\$137,496,000)                                       | (\$47,298,000)   | (\$17,109,000)   |
| 2008        | (\$774,447,000)   | (\$144,264,000)                                       | (\$49,627,000)   | (\$17,952,000)   |
| 2009        | (\$808,528,000)   | (\$150,613,000)                                       | (\$51,810,000)   | (\$18,742,000)   |
| 2010        | (\$848,720,000)   | (\$158,100,000)                                       | (\$54,386,000)   | (\$19,673,000)   |

**Fiscal Analysis**

The bill would create new law, relating to the collection of sales or use taxes by certain businesses.

The bill would define "nexus" as substantial physical presence in this state in the form of facilities, plants, distribution centers, offices, property, or employees.

A business would not be liable for the collection and remittance of sales and use taxes to the state unless the business had sufficient nexus. A business could not be considered to have sufficient nexus without evidence of sufficient contacts in the state as well as participation in any of the following economic activities: 1) directing business activities by use of telecommunications or common carrier; 2) advertising; 3) licensing software; 4) deriving income or revenue from customers; 5) sending representatives to generate business; 6) attending trade shows; 7) conducting seminars; or 8) assessing competitors' products.

The bill would take effect September 1, 2005.

### **Methodology**

The bill would significantly change the nexus requirements for businesses under the sales tax. Currently, licensing software, deriving revenue, sending representatives to generate business, attending trade shows, or conducting seminars are sufficient to establish nexus. Under the bill, a business would not be considered to have sufficient nexus without contacts in this state and participation in any of the above listed activities.

Data on the taxable sales from out of state taxpayers were gathered from Comptroller tax files. Taxable sales were adjusted to reflect sales made by businesses that would not have sufficient nexus, multiplied by the state sales tax rate, adjusted for effective date, and extrapolated through fiscal 2010. In addition, an adjustment was made to reflect the self-reporting of use tax by purchasing firms. The fiscal impact on units of local government were estimated proportionally.

### **Local Government Impact**

Local units of government would have a corresponding fiscal impact from sales tax revenues, as indicated in the above table.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts

**LBB Staff:** JOB, SD, WP, SM