

BILL ANALYSIS

Senate Research Center

H.B. 2010
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, small businesses in Texas are frequently the target of tax collectors in other states. Texas businesses that 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 United States 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 that 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 state's sales and use tax.

H.B. 2010 provides relief to Texas companies from the long-arm jurisdiction of other state courts on nexus and sales and use tax matters. H.B. 2010 allows a Texas company that 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, the claim by another state, Section 8, Article I, of the United States Constitution, and applicable court precedents in making its decision to award declaratory relief.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 37, Civil Practice and Remedies Code, by adding Section 37.0055, as follows:

Sec. 37.0055. DECLARATIONS RELATING TO LIABILITY FOR SALES AND USE TAXES OF ANOTHER STATE. (a) Defines "state."

(b) Provides that a district court has original jurisdiction of a proceeding seeking a declaratory judgment that involves a party seeking declaratory relief that is a business that is organized under the laws of this state or is otherwise owned by a resident of this state; and a responding party that is an official of another state; and asserts a claim that the party seeking declaratory relief is required to collect sales or use taxes for the state based on conduct of the business that occurs in whole or in part within this state.

(c) Entitles a business described by Subsection (b)(1) 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.

(d) Requires the court to consider certain factual circumstances and decisions, in determining whether to grant declaratory relief to a business under this section.

SECTION 2. Makes application of Section 37.0055, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2007.