BILL ANALYSIS

C.S.H.B. 2583
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A destination management company is a professional services company possessing extensive local knowledge, expertise, and resources specializing in the design and implementation of events, activities, tours, transportation, and program logistics. There are approximately 20 such companies in Texas, many of which are small, women-owned businesses.

These companies are instrumental to the meetings and conventions industry in Texas, regularly marketing Texas as a destination to their clients, more than 80 percent of whom come from locations outside Texas, and preparing extensive proposals to attract their corporate clients to bring large meetings to Texas. Destination management companies spend one to three percent of their gross revenue actively marketing the destination of Texas all over the country and the world and functioning like a partner and private sales force for local convention and visitors' bureaus.

Under current law and in compliance with rulings by the comptroller of public accounts, a destination management company is considered a consumer and is responsible for paying sales tax on any taxable services or tangible personal property purchased in connection with providing the company's services. The services of a destination management company are not subject to sales tax. However, the comptroller is expected to issue a ruling that addresses the collection of sales tax by caterers and event planners, which may have the unintended consequence of applying to destination management companies, reclassifying them as resellers. The ruling effectively requires these companies to stop paying sales taxes on taxable services or tangible personal property they purchase and instead issue resale certificates to their vendors. A company would then have to collect sales tax from its clients. Since industry standards generally require these companies to roll the cost of their own services into the prices they charge clients for provided services, sales tax would be collected on the entire price, including the company’s services, making the company and Texas less competitive with other states and their destination management companies.

Furthermore, industry standards frequently require destination management companies to provide clients with one bundled charge for an assortment of services including transportation, meals, and entertainment. However, applying sales tax to the bundled charge would result in sales tax being applied to services that otherwise are not taxed, such as transportation or entertainment, in addition to the company’s services.

C.S.H.B. 2583 clarifies existing law by providing that a destination management company is a consumer of tangible personal property and that services provided under a destination management company’s services contract are not subject to sales tax.

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. 2583 amends the Tax Code to establish that a qualified destination management company is the consumer of taxable items sold or otherwise provided under a qualified destination management services contract and that destination management services provided under the contract are not considered taxable services for purposes of the sales and use tax. The bill defines "destination management services" as the following services when provided under a qualified destination management services contract: transportation management; booking and managing entertainers; coordination of tours or recreational activities; meeting, conference, or event registration; meeting, conference, or event staffing; event management; and meal coordination.

C.S.H.B. 2583 defines "qualified destination management company" to mean a business entity that is incorporated or is a limited liability company; receives at least 80 percent of the entity's annual total revenue from providing or arranging for the provision of destination management services; maintains a permanent nonresidential office from which the services are provided or arranged; has at least three full-time employees; spends at least one percent of the entity's annual gross receipts to market the destinations with respect to which destination management services are provided; has at least 80 percent of the entity's business clients located outside of Texas; does not own equipment, other than office equipment used in the conduct of the entity's business, used to directly provide destination management services; is not doing business as a caterer; does not provide services for weddings; does not own a venue at which events or activities for which destination management services are provided occur; and is not a subsidiary of another entity that, and is not a member of an affiliated group another member of which, is doing business as or owns or operates another entity doing business as a caterer or owns or operates a venue described above.

C.S.H.B. 2583 defines "qualified destination management services contract" to mean a contract under which at least three of those services are provided by a qualified destination management company that pays or accrues liability for the payment of sales and use taxes on purchases of taxable items that will be consumed or used by the company in performing the contract and are provided in Texas to a client that is not an individual and that is a corporation, partnership, limited liability company, trade association, or other business entity, other than a social club or fraternal organization, and has its principal place of business outside the county where the services are to be provided and agrees to pay the company for all services provided to the client under the terms of the contract.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2583 differs from the original in the definition of "destination management services" by limiting the term to services provided under a qualified destination management services contract.

C.S.H.B. 2583 differs from the original, in the portion of the definition of "qualified destination management company" that characterizes such an entity as receiving at least 80 percent of its annual total revenue from providing or arranging for the provision of destination management services, by removing specifications that such revenue be calculated as revenue from its entire business as determined under franchise tax law and that the revenue comes from providing or arranging for the provision of a combination of at least four such services.

C.S.H.B. 2583, in the portion of the definition of "qualified destination management company"

characterizing such an entity as having at least three full-time employees, removes a provision in the original that allows a company to fall within the definition if it meets that minimum staffing level during all or part of a calendar year. The substitute adds provisions not in the original requiring an entity, in order to fall within the definition, to spend at least one percent of its annual gross receipts to market the destinations with respect to which destination management services are provided and to have at least 80 percent of its business clients located outside of Texas. The substitute adds a provision not in the original specifying that an entity, in order to fall within the definition, cannot be a subsidiary of another entity that is doing business as, or owns or operates another entity doing business as, a caterer or that owns or operates a venue at which events or activities for which destination management services are provided occur. The substitute adds also that an entity, in order to fall within the definition, cannot be a member of an affiliated group, another member of which owns or operates such a venue or is doing business as, or owns or operates another entity doing business as, a caterer.

C.S.H.B. 2583 differs from the original, in the definition of "qualified destination management services contract," by adding a specification that, in order for a contract to fall within the definition, it must be a contract under which at least three such services are provided. The substitute removes a requirement in the original specifying that, in order for a contract to fall within the definition, it must be provided by a qualified destination management company that pays each person who sells or leases to the company taxable items that will be consumed or used in performing the contract for the sale or use of those items and amounts charged by the person for sales and use taxes. The substitute adds specifications not in the original that, in order for a contract to fall within the definition, the destination management services must be provided, if a specified type of business client, in Texas, and, moreover, must be provided by a qualified destination management company that pays or accrues liability for the payment of sales and use taxes on purchases of taxable items that will be consumed or used by the company in performing the contract.