

## **BILL ANALYSIS**

C.S.H.B. 3927  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas franchise tax has long been based on where a company sells its goods. This ensures a competitive and geographically unbiased system in which an out-of-state seller of goods and a Texas seller of goods are subject to the same level of tax. In contrast, Texas service sellers, including Internet hosting services, may pay hundreds of times more franchise tax than an out-of-state competitor with an identical level of Texas sales. That is because these services are taxed where they are performed, rather than where they are sold. As a result, Texas has an unbalanced tax burden and is less competitive for attracting Internet hosting data centers.

Mirroring changes made in the apportionment rules by past Texas legislatures and similar statutes in a number of states, this legislation seeks to change the franchise tax apportionment method for Internet hosting. C.S.H.B. 3927 bases the apportionment on the location of the customer, instead of the location of the service provider, to promote fairness and competitiveness.

### **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. 3927 adds provisions to the Tax Code, relating to the franchise tax, to establish that, for a taxable entity receiving more than 75 percent of its total revenue from Internet hosting, a receipt from Internet hosting is a receipt from business done in Texas if the customer to whom the service is provided is located in Texas. The bill specifies that the added provisions take effect for reports due on or before January 1, 2015, except that the bill requires the comptroller of public accounts on or before December 1 of each year to evaluate the statewide fiscal impact of the implementation of the added provisions and specifies that, if after an evaluation the comptroller determines that their implementation will not have a negative fiscal impact on Texas, the added provisions take effect for each report originally due on or after January 1 of the year following the year in which the comptroller makes that determination. The bill specifies that the provision relating to the comptroller expires December 2, 2013.

C.S.H.B. 3927 defines "Internet hosting" to mean providing for consideration to an unrelated user access over the Internet to computer servers on which the users process their own data and that are owned or leased and managed by the provider, and that are located in a remote, secure data center that is owned or leased by the provider. The bill excludes telecommunications services from the definition. The bill provides that, for purposes of the definition, a computer server is managed by the entity that provides, under contract with the user, the operating system license and installation and maintenance for the server, redundant electric power for the server and for the secure data center, redundant Internet access for the server, and hardware maintenance for the server.

## **EFFECTIVE DATE**

September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3927 differs from the original by increasing the Internet total hosting revenue threshold from 50 percent in the original to 75 percent in the substitute. The substitute differs from the original by specifying that a receipt from Internet hosting is a receipt from business done in Texas if the customer for whom the service is provided is located in Texas, rather than if, as in the original, the place from which the customer's trade or business is directed or managed is in Texas. The substitute adds a temporary provision, not in the original, requiring the comptroller annually to evaluate the statewide fiscal impact of the implementation of the 75 percent total revenue provision. The substitute differs from the original by specifying alternative dates for when the provision takes effect, with respect to taxpayer reports, depending on the comptroller's determinations.

C.S.H.B. 3927 differs from the original by modifying the definition of "Internet hosting." The substitute — while repeating without substantive change that the term means providing access to computer servers located in a remote, secure data center — clarifies additionally that the term means providing such access over the Internet, adds that the term means providing such access for consideration to an unrelated user, adds provisions making the definition applicable to computer servers on which the users process the users' own data and that are leased and managed by the provider, and adds provisions limiting server location to a remote, secure data center that is owned or leased by the provider. The substitute removes provisions in the original that expand the term to include providing related devices as well as computer servers. The substitute removes provisions in the original that expand the term to include providing other similar information technology services over the Internet including cloud computing, computing as a service, data storage, and hosted e-mail. The substitute adds a provision not in the original establishing that the term does not include telecommunications services. The substitute adds provisions not in the original that clarify, for purposes of the definition, the entity by which a computer server is managed.