

By: Thompson

H.B. No. 980

A BILL TO BE ENTITLED

AN ACT

relating to the collection and allocation of local sales and use taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 321.203(c) and (d), Tax Code, are amended to read as follows:

(c) If a retailer has more than one place of business in this state, a sale of a taxable item by the retailer is consummated at the ~~[retailer's]~~ place of business of the retailer:

(1) from which the retailer ships or delivers the item, if:

(A) the purchaser or lessee did not place the order or agree to pay for the item in person at a place of business of the retailer; and

(B) the retailer ships or delivers the item to a point designated by the purchaser or lessee; ~~or~~

(2) where the purchaser or lessee places the order or agrees to pay for the item, if the purchaser or lessee:

(A) places the order or agrees to pay for the item in person at a place of business of the retailer; and

(B) does not take possession of or remove the item from a place of business of the retailer; or

(3) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of

1 and removes the item from a place of business of the retailer.

2 (d) If Subsection (c) does not apply ~~[neither the possession~~
3 ~~of a taxable item is taken at nor shipment or delivery of the item is~~
4 ~~made from the retailer's place of business in this state]~~, the sale
5 is consummated at:

6 (1) the ~~[retailer's]~~ place of business of the retailer
7 in this state where the order is received; or

8 (2) if the order is not received at a place of business
9 of the retailer, the place of business from which the retailer's
10 agent or employee who took the order operates.

11 SECTION 2. Subchapter F, Chapter 321, Tax Code, is amended
12 by adding Section 321.5025 to read as follows:

13 Sec. 321.5025. REALLOCATION OF MUNICIPAL TAX REVENUE. (a)
14 If the comptroller determines that tax revenue collected by the
15 comptroller has been sent incorrectly to a municipality under
16 Section 321.501, the comptroller may reallocate the tax revenue to
17 the appropriate municipality only if:

18 (1) the reallocation is made in accordance with this
19 section; and

20 (2) the municipality that originally received the
21 revenue receives notification of the reallocation under Subsection
22 (b) not later than the first anniversary of the date the
23 municipality originally received the revenue.

24 (b) If the comptroller determines that tax revenue
25 collected by the comptroller has been sent incorrectly to a
26 municipality under Section 321.501, the comptroller shall send to
27 that municipality written notice that the comptroller intends to

1 reallocate the revenue to another municipality. A municipality
2 that receives a notice under this subsection may protest the
3 comptroller's determination by submitting to the comptroller a
4 written request for a hearing on the issue of whether the original
5 allocation of the revenue was incorrect. The municipality must
6 submit the request not later than the 30th day after the date the
7 municipality receives the notice under this subsection.

8 (c) Not later than the 15th day after the date the
9 comptroller receives a request for a hearing under Subsection (b),
10 the comptroller shall send to the requesting municipality a copy of
11 all records, documents, and other information on which the
12 comptroller relied in making its determination, regardless of
13 whether the information is confidential under state law, including
14 Sections 111.006 and 151.027. The provision of confidential
15 information to a municipality under this subsection does not
16 affect the confidential nature of the information. A municipality
17 shall use the information only in a manner that maintains the
18 confidential nature of the information and may not disclose or
19 release the information to the public.

20 (d) Not earlier than the 30th day or later than the 90th day
21 after the date the comptroller receives a request for a hearing
22 under Subsection (b), the comptroller shall hold a hearing on
23 whether the original allocation of the revenue was incorrect.
24 After the conclusion of the hearing, the comptroller shall issue to
25 the municipality a written final decision regarding the protest.
26 For purposes of Section 2001.171, Government Code, the
27 comptroller's decision is final and appealable on the date the

decision is issued under this subsection.

(e) If the municipality is not satisfied with the comptroller's written final decision, the municipality may appeal the decision by filing a petition in a Travis County district court not later than the 30th day after the date the municipality receives the decision. Judicial review of the decision is under the substantial evidence rule. The court shall hear the appeal without a jury.

SECTION 3. Section 322.108(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the following apply to the taxes imposed by this chapter in the same manner as applicable to a municipality under Chapter 321:

- (1) Section 321.002(a)(3);
- (2) Section 321.003;
- (3) Section 321.203;
- (4) Section 321.205(d);
- (5) Section 321.208;
- (6) Section 321.209;
- (7) Section 321.303;
- (8) Section 321.304; ~~and~~
- (9) Section 321.305; and
- (10) Section 321.5025.

SECTION 4. Sections 323.203(c) and (d), Tax Code, are amended to read as follows:

(c) If a retailer has more than one place of business in this state, a sale of a taxable item by the retailer is consummated at

the ~~[retailer's]~~ place of business of the retailer:

(1) from which the retailer ships or delivers the item, if:

(A) the purchaser or lessee did not place the order or agree to pay for the item in person at a place of business of the retailer; and

(B) the retailer ships or delivers the item to a point designated by the purchaser or lessee; ~~or~~

(2) where the purchaser or lessee places the order or agrees to pay for the item, if the purchaser or lessee:

(A) places the order or agrees to pay for the item in person at a place of business of the retailer; and

(B) does not take possession of or remove the item from a place of business of the retailer; or

(3) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

(d) If Subsection (c) does not apply ~~[neither the possession of a taxable item is taken at nor shipment or delivery of the item is made from the retailer's place of business in this state]~~, the sale is consummated at:

(1) the ~~[retailer's]~~ place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

SECTION 5. Subchapter F, Chapter 323, Tax Code, is amended

by adding Section 323.5025 to read as follows:

Sec. 323.5025. REALLOCATION OF COUNTY TAX REVENUE. (a) If the comptroller determines that tax revenue collected by the comptroller has been sent incorrectly to a county under Section 323.501, the comptroller may reallocate the tax revenue to the appropriate county only if:

(1) the reallocation is made in accordance with this section; and

(2) the county that originally received the revenue receives notification of the reallocation under Subsection (b) not later than the first anniversary of the date the county originally received the revenue.

(b) If the comptroller determines that tax revenue collected by the comptroller has been sent incorrectly to a county under Section 323.501, the comptroller shall send to that county written notice that the comptroller intends to reallocate the revenue to another county. A county that receives a notice under this subsection may protest the comptroller's determination by submitting to the comptroller a written request for a hearing on the issue of whether the original allocation of the revenue was incorrect. The county must submit the request not later than the 30th day after the date the county receives the notice under this subsection.

(c) Not later than the 15th day after the date the comptroller receives a request for a hearing under Subsection (b), the comptroller shall send to the requesting county a copy of all records, documents, and other information on which the comptroller

relied in making its determination, regardless of whether the information is confidential under state law, including Sections 111.006 and 151.027. The provision of confidential information to a county under this subsection does not affect the confidential nature of the information. A county shall use the information only in a manner that maintains the confidential nature of the information and may not disclose or release the information to the public.

(d) Not earlier than the 30th day or later than the 90th day after the date the comptroller receives a request for a hearing under Subsection (b), the comptroller shall hold a hearing on whether the original allocation of the revenue was incorrect. After the conclusion of the hearing, the comptroller shall issue to the county a written final decision regarding the protest. For purposes of Section 2001.171, Government Code, the comptroller's decision is final and appealable on the date the decision is issued under this subsection.

(e) If the county is not satisfied with the comptroller's written final decision, the county may appeal the decision by filing a petition in a Travis County district court not later than the 30th day after the date the county receives the decision. Judicial review of the decision is under the substantial evidence rule. The court shall hear the appeal without a jury.

SECTION 6. Section 380.001, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding Section 380.002, a municipality may not use sales and use tax revenue that was reallocated to the

1 municipality under Section 321.5025, Tax Code, to make loans or
2 grants for the administration of a program under this chapter.

3 SECTION 7. The change in law made by this Act does not
4 affect tax liability accruing before the effective date of this
5 Act. That liability continues in effect as if this Act had not been
6 enacted, and the former law is continued in effect for the
7 collection of taxes due and for civil and criminal enforcement of
8 the liability for those taxes.

9 SECTION 8. This Act takes effect July 1, 2009, if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for effect on that
13 date, this Act takes effect September 1, 2009.