

By: Howard of Fort Bend

H.B. No. 4077

A BILL TO BE ENTITLED

AN ACT

relating to administration of the municipal sales and use tax;
providing a criminal penalty.

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

SECTION 1. Subchapter D, Chapter 321, Tax Code, is amended
by adding Sections 321.3055 and 321.3075 to read as follows:

Sec. 321.3055. ADDITIONAL PENALTY FOR FILING REPORT
RELATING TO UNLAWFULLY OR ERRONEOUSLY COLLECTED MUNICIPAL TAX
REVENUE. (a) A person commits an offense if the person files a
report in relation to taxes imposed by a municipality under this
chapter that the person knows have been unlawfully or erroneously
collected and remitted to this state.

(b) Except as provided by Subsections (c) and (d), an
offense under this section is a misdemeanor punishable by a fine of
not more than \$2,000.

(c) If it is shown on the trial of an offense under this
section that the person has previously been finally convicted of
one offense under this section, the offense is a misdemeanor
punishable by a fine of not more than \$4,000.

(d) If it is shown on the trial of an offense under this
section that the person has previously been finally convicted of
two or more offenses under this section, the offense is a felony of
the third degree.

(e) This section does not apply to a report filed in

1 relation to taxes imposed by a political subdivision, other than a
2 municipality, whose imposition of the sales and use tax is governed
3 by this chapter.

4 Sec. 321.3075. REFUNDS: LIMITATIONS. (a) Notwithstanding
5 Section 111.104(c) or any other law, the comptroller may not grant a
6 refund claim in relation to tax revenue previously allocated to a
7 municipality unless the refund claim is filed with the comptroller
8 not later than the first anniversary of the date the municipality
9 originally received that revenue from the comptroller.

10 (b) Section 111.203 does not apply to the filing of a refund
11 claim described by Subsection (a) and the comptroller may not
12 extend the limitation period provided by Subsection (a).

13 (c) This section does not affect the limitation period for
14 the filing of a refund claim relating to tax revenue allocated to a
15 political subdivision, other than a municipality, whose imposition
16 of the sales and use tax is governed by this chapter.

17 SECTION 2. Subchapter F, Chapter 321, Tax Code, is amended
18 by adding Section 321.5026 to read as follows:

19 Sec. 321.5026. REFUND OR REALLOCATION OF MUNICIPAL TAX
20 REVENUE. (a) If the comptroller determines that a tax refund claim
21 should be granted that would result in the claimant receiving at
22 least \$100,000 in tax revenue collected by the comptroller that has
23 been previously allocated to a municipality, the comptroller may
24 grant the refund claim in relation to that revenue only if:

25 (1) the refund claim was filed before the expiration
26 of the limitation period prescribed by Section 321.3075(a); and

27 (2) the refund of that revenue is made in accordance

1 with this section.

2 (b) If the comptroller determines that tax revenue
3 collected by the comptroller has been sent incorrectly to a
4 municipality under Section 321.502, the comptroller may reallocate
5 the tax revenue to the appropriate municipality only if the
6 reallocation is made in accordance with this section not later than
7 the first anniversary of the date the municipality originally
8 received that revenue from the comptroller.

9 (c) If the comptroller determines that a tax refund claim
10 described by Subsection (a) should be granted or that a
11 reallocation described by Subsection (b) should be made, the
12 comptroller shall send to that municipality written notice that the
13 comptroller intends to grant the tax refund claim or reallocate the
14 revenue. A municipality that receives a notice under this
15 subsection may protest the comptroller's determination by
16 submitting to the comptroller a written request for a hearing on the
17 issue of whether the person who filed the tax refund claim is
18 entitled to the refund or whether the original allocation of the
19 revenue was incorrect. The municipality must submit the request not
20 later than the 30th day after the date the municipality receives the
21 notice under this subsection.

22 (d) Not later than the 15th day after the date the
23 comptroller receives a request for a hearing under Subsection (c),
24 the comptroller shall send to the requesting municipality a copy of
25 all records, documents, and other information on which the
26 comptroller relied in making its determination, regardless of
27 whether the information is confidential under state law, including

1 Sections 111.006 and 151.027. The provision of confidential
2 information to a municipality under this subsection does not affect
3 the confidential nature of the information. A municipality shall
4 use the information only in a manner that maintains the
5 confidential nature of the information and may not disclose or
6 release the information to the public.

7 (e) Not earlier than the 30th day or later than the 90th day
8 after the date the comptroller receives a request for a hearing
9 under Subsection (c), the comptroller shall hold a hearing on
10 whether the person who filed the tax refund claim is entitled to the
11 refund or whether the original allocation of the revenue was
12 incorrect. After the conclusion of the hearing, the comptroller
13 shall issue to the municipality a written final decision regarding
14 the protest. For purposes of Section 2001.171, Government Code,
15 the comptroller's decision is final and appealable on the date the
16 decision is issued under this subsection.

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

24 SECTION 3. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.