

1 AN ACT

2 relating to the imposition of the franchise tax and local sales and
3 use taxes, including the authority of a county or other local
4 governmental entity to receive local sales tax information.

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

6 SECTION 1. Subsection (c), Section 151.027, Tax Code, is
7 amended to read as follows:

8 (c) This section does not prohibit:

9 (1) the examination of information, if authorized by
10 the comptroller, by another state officer or law enforcement
11 officer, by a tax official of another state, by a tax official of
12 the United Mexican States, or by an official of the United States if
13 a reciprocal agreement exists;

14 (2) the delivery to a taxpayer, or a taxpayer's
15 authorized representative, of a copy of a report or other paper
16 filed by the taxpayer under this chapter;

17 (3) the publication of statistics classified to
18 prevent the identification of a particular report or items in a
19 particular report;

20 (4) the use of records, reports, or information
21 secured, derived, or obtained by the attorney general or the
22 comptroller in an action under this chapter against the same
23 taxpayer who furnished the information;

24 (5) the delivery to a successor, receiver, executor,

1 administrator, assignee, or guarantor of a taxpayer of information
2 about items included in the measure and amounts of any unpaid tax or
3 amounts of tax, penalties, and interest required to be collected;

4 (6) the delivery of information to a municipality,
5 county, or other local governmental entity [~~an eligible~~
6 ~~municipality~~] in accordance with Section 321.3022, 322.2022, or
7 323.3022; or

8 (7) the release of information in or derived from a
9 record, report, or other instrument required to be furnished under
10 this chapter by a governmental body, as that term is defined in
11 Section 552.003, Government Code.

12 SECTION 2. Subchapter C, Chapter 151, Tax Code, is amended
13 by adding Section 151.0565 to read as follows:

14 Sec. 151.0565. TAXABLE ITEMS SOLD OR PROVIDED UNDER
15 DESTINATION MANAGEMENT SERVICES CONTRACTS. (a) In this section:

16 (1) "Destination management services" means the
17 following services when provided under a qualified destination
18 management services contract:

- 19 (A) transportation management;
- 20 (B) booking and managing entertainers;
- 21 (C) coordination of tours or recreational
22 activities;
- 23 (D) meeting, conference, or event registration;
- 24 (E) meeting, conference, or event staffing;
- 25 (F) event management; and
- 26 (G) meal coordination.

27 (2) "Qualified destination management company" means

1 a business entity that:

2 (A) is incorporated or is a limited liability
3 company;

4 (B) receives at least 80 percent of the entity's
5 annual total revenue from providing or arranging for the provision
6 of destination management services;

7 (C) maintains a permanent nonresidential office
8 from which the destination management services are provided or
9 arranged;

10 (D) has at least three full-time employees;

11 (E) spends at least one percent of the entity's
12 annual gross receipts to market the destinations with respect to
13 which destination management services are provided;

14 (F) has at least 80 percent of the entity's
15 clients described by Subdivision (3)(A) located outside this state;

16 (G) other than office equipment used in the
17 conduct of the entity's business, does not own equipment used to
18 directly provide destination management services, including motor
19 coaches, limousines, sedans, dance floors, decorative props,
20 lighting, podiums, sound or video equipment, or equipment for
21 catered meals;

22 (H) is not doing business as a caterer;

23 (I) does not provide services for weddings;

24 (J) does not own a venue at which events or
25 activities for which destination management services are provided
26 occur; and

27 (K) is not a subsidiary of another entity that,

1 and is not a member of an affiliated group, as that term is defined
2 by Section 171.0001, another member of which:

3 (i) is doing business as, or owns or
4 operates another entity doing business as, a caterer; or

5 (ii) owns or operates a venue described by
6 Paragraph (J).

7 (3) "Qualified destination management services
8 contract" means a contract under which at least three of the
9 destination management services listed in Subdivision (1) are
10 provided:

11 (A) in this state to a client that is not an
12 individual and that:

13 (i) is a corporation, partnership, limited
14 liability company, trade association, or other business entity,
15 other than a social club or fraternal organization;

16 (ii) has its principal place of business
17 outside the county where the destination management services are to
18 be provided; and

19 (iii) agrees to pay the qualified
20 destination management company for all destination management
21 services provided to the client under the terms of the contract; and

22 (B) by a qualified destination management
23 company that pays or accrues liability for the payment of taxes
24 imposed by this chapter on purchases of taxable items that will be
25 consumed or used by the company in performing the contract.

26 (b) A qualified destination management company is the
27 consumer of taxable items sold or otherwise provided under a

1 qualified destination management services contract, and the
2 destination management services provided under the contract are not
3 considered taxable services, as that term is defined by Section
4 151.0101.

5 SECTION 3. (a) Section 171.1011, Tax Code, is amended by
6 adding Subsection (g-6) to read as follows:

7 (g-6) A taxable entity that is a qualified destination
8 management company as defined by Section 151.0565 shall exclude
9 from its total revenue, to the extent included under Subsection
10 (c)(1)(A), (c)(2)(A), or (c)(3), payments made to other persons to
11 provide services, labor, or materials in connection with the
12 provision of destination management services as defined by Section
13 151.0565.

14 (b) This section applies only to a report originally due on
15 or after the effective date of this section.

16 (c) Notwithstanding any other provision of this Act, this
17 section takes effect January 1, 2010.

18 SECTION 4. Subdivision (3), Subsection (a), Section
19 321.002, Tax Code, is amended to read as follows:

20 (3) "Place of business of the retailer" means an
21 established outlet, office, or location operated by the retailer or
22 the retailer's agent or employee for the purpose of receiving
23 orders for taxable items and includes any location at which three or
24 more orders are received by the retailer during a calendar year. A
25 warehouse, storage yard, or manufacturing plant is not a "place of
26 business of the retailer" unless at least three orders are received
27 by the retailer during the calendar year at the warehouse, storage

1 yard, or manufacturing plant. An outlet, office, facility, or
2 location that contracts with a retail or commercial business
3 engaged in activities to which this chapter applies to process for
4 that business invoices or bills of lading onto which sales tax is
5 added is not a "place of business of the retailer" if the
6 comptroller determines that the outlet, office, facility, or
7 location functions or exists to avoid the tax imposed by this
8 chapter or to rebate a portion of the tax imposed by this chapter to
9 the contracting business. Notwithstanding any other provision of
10 this subdivision, a kiosk is not a "place of business of the
11 retailer." In this subdivision, "kiosk" means a small stand-alone
12 area or structure that:

13 (A) is used solely to display merchandise or to
14 submit orders for taxable items from a data entry device, or both;

15 (B) is located entirely within a location that is
16 a place of business of another retailer, such as a department store
17 or shopping mall; and

18 (C) at which taxable items are not available for
19 immediate delivery to a customer.

20 SECTION 5. Section 321.203, Tax Code, is amended by
21 amending Subsections (c) and (d) and adding Subsections (c-1),
22 (c-2), and (c-3) to read as follows:

23 (c) If a retailer has more than one place of business in this
24 state, each [a] sale of each [a] taxable item by the retailer is
25 consummated at the [retailer's] place of business of the retailer
26 in this state where the retailer first receives the order, provided
27 that the order is placed in person by the purchaser or lessee of the

1 taxable item at the place of business of the retailer in this state
2 where the retailer first receives the order.

3 (c-1) If the retailer has more than one place of business in
4 this state and Subsection (c) does not apply, the sale is
5 consummated at the place of business of the retailer in this state:

6 (1) from which the retailer ships or delivers the
7 item, if the retailer ships or delivers the item to a point
8 designated by the purchaser or lessee; or

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

12 (c-2) Subsection (c) does not apply if:

13 (1) the taxable item is shipped or delivered from a
14 warehouse:

15 (A) that is a place of business of the retailer;

16 (B) in relation to which the retailer has an
17 economic development agreement with:

18 (i) the municipality in which the warehouse
19 is located that was entered into under Chapter 380, 504, or 505,
20 Local Government Code, or a predecessor statute, before January 1,
21 2009; or

22 (ii) the county in which the warehouse is
23 located that was entered into under Chapter 381, Local Government
24 Code, before January 1, 2009; and

25 (C) in relation to which the municipality
26 provides information relating to the economic development
27 agreement as required by Subsection (c-3) by the deadline

1 prescribed by that subsection, or, if appropriate, the county
2 complies with Section 323.203(c-3) by the deadline prescribed by
3 that section; and

4 (2) the place of business of the retailer at which the
5 retailer first receives the order in the manner described by
6 Subsection (c) is a retail outlet identified in the information
7 required by Subsection (c-3) or Section 323.203(c-3) as being
8 served by the warehouse on January 1, 2009.

9 (c-3) Not later than September 1, 2009, a municipality that
10 has entered into an economic development agreement described by
11 Subsection (c-2) shall send to the comptroller information
12 prescribed by the comptroller relating to the agreement that
13 identifies each warehouse subject to the agreement and each retail
14 outlet that, on January 1, 2009, was served by that warehouse. The
15 comptroller shall prescribe the manner in which the information
16 must be provided. The provision of information to the comptroller
17 under this subsection does not affect whether information described
18 by this subsection is confidential or excepted from required public
19 disclosure. This subsection and Subsection (c-2) expire September
20 1, 2014.

21 (d) If the retailer has more than one place of business in
22 this state and Subsections (c) and (c-1) do not apply [~~neither the~~
23 ~~possession of a taxable item is taken at nor shipment or delivery of~~
24 ~~the item is made from the retailer's place of business in this~~
25 ~~state], the sale is consummated at:~~

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

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

4 SECTION 6. Section 321.3022, Tax Code, is amended by
5 amending Subsections (a), (a-1), (b), (d), (e), (f), (g), (h), and
6 (i) and adding Subsection (a-2) to read as follows:

7 (a) In this section, "other local governmental entity" has
8 the meaning assigned by Section 321.107.

9 (a-1) Except as otherwise provided by this section, the
10 comptroller on request shall provide to a municipality or other
11 local governmental entity that has adopted a tax under this
12 chapter:

13 (1) information relating to the amount of tax paid to
14 the municipality or other local governmental entity under this
15 chapter during the preceding or current calendar year by each
16 person doing business in the municipality or other local
17 governmental entity who annually remits to the comptroller state
18 and local sales tax payments of more than \$25,000; and

19 (2) any other information as provided by this section.

20 (a-2) [~~(a-1)~~] The comptroller on request shall provide to a
21 municipality or other local governmental entity that has adopted a
22 tax under this chapter and that does not impose an ad valorem tax
23 information relating to the amount of tax paid to the municipality
24 or other local governmental entity under this chapter during the
25 preceding or current calendar year by each person doing business in
26 the municipality or other local governmental entity who annually
27 remits to the comptroller state and local sales tax payments of more

1 than \$500.

2 (b) The comptroller on request shall provide to a
3 municipality or other local governmental entity that has adopted a
4 tax under this chapter information relating to the amount of tax
5 paid to the municipality or other local governmental entity under
6 this chapter during the preceding or current calendar year by each
7 person doing business in an area, as defined by the municipality or
8 other local governmental entity, that is part of:

- 9 (1) an interlocal agreement;
- 10 (2) a tax abatement agreement;
- 11 (3) a reinvestment zone;
- 12 (4) a tax increment financing district;
- 13 (5) a revenue sharing agreement;
- 14 (6) an enterprise zone;
- 15 (7) a neighborhood empowerment zone;
- 16 (8) any other agreement, zone, or district similar to
17 those listed in Subdivisions (1)-(7); or
- 18 (9) any area defined by the municipality or other
19 local governmental entity for the purpose of economic forecasting.

20 (d) If the request for information under Subsection (b)
21 involves not more than three persons doing business in the defined
22 area who remit taxes under this chapter, the comptroller shall
23 refuse to provide the information to the municipality or other
24 local governmental entity unless the comptroller receives
25 permission from each of the persons allowing the comptroller to
26 provide the information to the municipality or other local
27 governmental entity as requested.

1 (e) A separate request for information under this section
2 must be made in writing by the municipality's mayor or chief
3 administrative officer or by the governing body of the other local
4 governmental entity each year.

5 (f) Information received by a municipality or other local
6 governmental entity under this section is confidential, is not open
7 to public inspection, and may be used only for the purpose of
8 economic forecasting, for internal auditing of a tax paid to the
9 municipality or other local governmental entity under this chapter,
10 or for the purpose described in Subsection (g).

11 (g) Information received by a municipality or other local
12 governmental entity under Subsection (b) may be used by the
13 municipality or other local governmental entity to assist in
14 determining revenue sharing under a revenue sharing agreement or
15 other similar agreement.

16 (h) The comptroller may set and collect from a municipality
17 or other local governmental entity reasonable fees to cover the
18 expense of compiling and providing information under this section.

19 (i) Notwithstanding Chapter 551, Government Code, the
20 governing body of a municipality or other local governmental
21 entity is not required to confer with one or more employees or a
22 third party in an open meeting to receive information or question
23 the employees or third party regarding the information received by
24 the municipality or other local governmental entity under this
25 section.

26 SECTION 7. Subchapter C, Chapter 322, Tax Code, is amended
27 by adding Section 322.2022 to read as follows:

1 Sec. 322.2022. TAX INFORMATION. (a) Except as otherwise
2 provided by this section, the comptroller on request shall provide
3 to a taxing entity:

4 (1) information relating to the amount of tax paid to
5 the entity under this chapter during the preceding or current
6 calendar year by each person doing business in the area included in
7 the entity who annually remits to the comptroller state and local
8 sales tax payments of more than \$25,000; and

9 (2) any other information as provided by this section.

10 (b) The comptroller on request shall provide to a taxing
11 entity information relating to the amount of tax paid to the entity
12 under this chapter during the preceding or current calendar year by
13 each person doing business in an area included in the entity, as
14 defined by the entity, that is part of:

15 (1) an interlocal agreement;

16 (2) a revenue sharing agreement;

17 (3) any other agreement similar to those listed in
18 Subdivisions (1) and (2); or

19 (4) any area defined by the entity for the purpose of
20 economic forecasting.

21 (c) The comptroller shall provide the information under
22 Subsection (b) as an aggregate total for all persons doing business
23 in the defined area without disclosing individual tax payments.

24 (d) If the request for information under Subsection (b)
25 involves not more than three persons doing business in the defined
26 area who remit taxes under this chapter, the comptroller shall
27 refuse to provide the information to the taxing entity unless the

1 comptroller receives permission from each of the persons allowing
2 the comptroller to provide the information to the entity as
3 requested.

4 (e) A separate request for information under this section
5 must be made in writing by the governing body of the taxing entity
6 each year.

7 (f) Information received by a taxing entity under this
8 section is confidential, is not open to public inspection, and may
9 be used only for the purpose of economic forecasting, for internal
10 auditing of a tax paid to the entity under this chapter, or for the
11 purpose described by Subsection (g).

12 (g) Information received by a taxing entity under
13 Subsection (b) may be used by the entity to assist in determining
14 revenue sharing under a revenue sharing agreement or other similar
15 agreement.

16 (h) The comptroller may set and collect from a taxing entity
17 reasonable fees to cover the expense of compiling and providing
18 information under this section.

19 (i) Notwithstanding Chapter 551, Government Code, the
20 governing body of a taxing entity is not required to confer with one
21 or more employees or a third party in an open meeting to receive
22 information or question the employees or third party regarding the
23 information received by the entity under this section.

24 SECTION 8. Section 323.203, Tax Code, is amended by
25 amending Subsections (c) and (d) and adding Subsections (c-1),
26 (c-2), and (c-3) to read as follows:

27 (c) If a retailer has more than one place of business in this

1 state, each [a] sale of each [a] taxable item by the retailer is
2 consummated at the [~~retailer's~~] place of business of the retailer
3 in this state where the retailer first receives the order, provided
4 that the order is placed in person by the purchaser or lessee of the
5 taxable item at the place of business of the retailer in this state
6 where the retailer first receives the order.

7 (c-1) If the retailer has more than one place of business in
8 this state and Subsection (c) does not apply, the sale is
9 consummated at the place of business of the retailer in this state:

10 (1) from which the retailer ships or delivers the
11 item, if the retailer ships or delivers the item to a point
12 designated by the purchaser or lessee; or

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

16 (c-2) Subsection (c) does not apply if:

17 (1) the taxable item is shipped or delivered from a
18 warehouse:

19 (A) that is a place of business of the retailer;

20 (B) in relation to which the retailer has an
21 economic development agreement with:

22 (i) the county in which the warehouse is
23 located that was entered into under Chapter 381, Local Government
24 Code, before January 1, 2009; or

25 (ii) the municipality in which the
26 warehouse is located that was entered into under Chapter 380, 504,
27 or 505, Local Government Code, or a predecessor statute, before

1 January 1, 2009; and

2 (C) in relation to which the county provides
3 information relating to the economic development agreement as
4 required by Subsection (c-3) by the deadline prescribed by that
5 subsection, or, if appropriate, the municipality complies with
6 Section 321.203(c-3) by the deadline prescribed by that section;
7 and

8 (2) the place of business of the retailer at which the
9 retailer first receives the order in the manner described by
10 Subsection (c) is a retail outlet identified in the information
11 required by Subsection (c-3) or Section 321.203(c-3) as being
12 served by the warehouse on January 1, 2009.

13 (c-3) Not later than September 1, 2009, a county that has
14 entered into an economic development agreement described by
15 Subsection (c-2) shall send to the comptroller information
16 prescribed by the comptroller relating to the agreement that
17 identifies each warehouse subject to the agreement and each retail
18 outlet that, on January 1, 2009, was served by that warehouse. The
19 comptroller shall prescribe the manner in which the information
20 must be provided. The provision of information to the comptroller
21 under this subsection does not affect whether information described
22 by this subsection is confidential or excepted from required public
23 disclosure. This subsection and Subsection (c-2) expire September
24 1, 2014.

25 (d) If the retailer has more than one place of business in
26 this state and Subsections (c) and (c-1) do not apply [~~neither the~~
27 possession of a taxable item is taken at nor shipment or delivery of

1 ~~the item is made from the retailer's place of business in this~~
2 ~~state]~~, the sale is consummated at:

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

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

8 SECTION 9. Subchapter D, Chapter 323, Tax Code, is amended
9 by adding Section 323.3022 to read as follows:

10 Sec. 323.3022. TAX INFORMATION. (a) In this section,
11 "other local governmental entity" includes any governmental entity
12 created by the legislature that has a limited purpose or function,
13 that has a defined or restricted geographic territory, and that is
14 authorized by law to impose a local sales and use tax the
15 imposition, computation, administration, enforcement, and
16 collection of which is governed by this chapter.

17 (b) Except as otherwise provided by this section, the
18 comptroller on request shall provide to a county or other local
19 governmental entity that has adopted a tax under this chapter:

20 (1) information relating to the amount of tax paid to
21 the county or other local governmental entity under this chapter
22 during the preceding or current calendar year by each person doing
23 business in the county or other local governmental entity who
24 annually remits to the comptroller state and local sales tax
25 payments of more than \$25,000; and

26 (2) any other information as provided by this section.

27 (c) The comptroller on request shall provide to a county or

1 other local governmental entity that has adopted a tax under this
2 chapter information relating to the amount of tax paid to the county
3 or other local governmental entity under this chapter during the
4 preceding or current calendar year by each person doing business in
5 an area, as defined by the county or other local governmental
6 entity, that is part of:

7 (1) an interlocal agreement;

8 (2) a tax abatement agreement;

9 (3) a reinvestment zone;

10 (4) a tax increment financing district;

11 (5) a revenue sharing agreement;

12 (6) an enterprise zone;

13 (7) any other agreement, zone, or district similar to
14 those listed in Subdivisions (1)-(6); or

15 (8) any area defined by the county or other local
16 governmental entity for the purpose of economic forecasting.

17 (d) The comptroller shall provide the information under
18 Subsection (c) as an aggregate total for all persons doing business
19 in the defined area without disclosing individual tax payments.

20 (e) If the request for information under Subsection (c)
21 involves not more than three persons doing business in the defined
22 area who remit taxes under this chapter, the comptroller shall
23 refuse to provide the information to the county or other local
24 governmental entity unless the comptroller receives permission
25 from each of the persons allowing the comptroller to provide the
26 information to the county or other local governmental entity as
27 requested.

1 (f) A separate request for information under this section
2 must be made in writing each year by the county judge or the
3 governing body of the other local governmental entity.

4 (g) Information received by a county or other local
5 governmental entity under this section is confidential, is not open
6 to public inspection, and may be used only for the purpose of
7 economic forecasting, for internal auditing of a tax paid to the
8 county or other local governmental entity under this chapter, or
9 for the purpose described by Subsection (h).

10 (h) Information received by a county or other local
11 governmental entity under Subsection (c) may be used by the county
12 or other local governmental entity to assist in determining revenue
13 sharing under a revenue sharing agreement or other similar
14 agreement.

15 (i) The comptroller may set and collect from a county or
16 other local governmental entity reasonable fees to cover the
17 expense of compiling and providing information under this section.

18 (j) Notwithstanding Chapter 551, Government Code, the
19 commissioners court of a county or the governing body of the other
20 local governmental entity is not required to confer with one or more
21 employees or a third party in an open meeting to receive information
22 or question the employees or third party regarding the information
23 received by the county or other local governmental entity under
24 this section.

25 SECTION 10. The change in law made by this Act does not
26 affect tax liability accruing before the effective date of this
27 Act. That liability continues in effect as if this Act had not been

1 enacted, and the former law is continued in effect for the
2 collection of taxes due and for civil and criminal enforcement of
3 the liability for those taxes.

4 SECTION 11. Sections 321.203 and 323.203, Tax Code, as
5 amended by this Act, take effect immediately if this Act receives a
6 vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect,
9 Sections 321.203 and 323.203, Tax Code, as amended by this Act, take
10 effect August 31, 2009.

11 SECTION 12. Except as otherwise provided by this Act, this
12 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 636 passed the Senate on April 21, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on June 1, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 636 passed the House, with amendments, on May 25, 2009, by the following vote: Yeas 143, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor