

BILL ANALYSIS

C.S.H.B. 590
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law there is no process for appealing the reallocation of sales tax dollars from one governmental entity to another, placing an undue burden on an entity that faces the possibility of having to pay back sales taxes that may have been rightfully allocated to it but that it may have already spent. Some entities want an appeals process to dispute possible reallocation action by the comptroller. C.S.H.B. 590 attempts to remedy the problem by revising provisions relating to the reallocation of sales tax revenue.

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. 590 amends the Tax Code to authorize a municipality, county, or local governmental entity to request a review of all available sales tax returns and reports in the possession of the comptroller of public accounts filed by not more than five individual taxpayers doing business in the municipality, county, or local governmental entity that are included and identified by the municipality, county, or local government from tax information received from the comptroller and that relate to a reallocation or refund in an amount above a specified threshold. The bill requires the comptroller to provide the returns and reports requested for review regardless of whether the information is confidential under state law. The bill establishes that the provision of confidential information to a municipality, county, or local governmental entity does not affect the confidential nature of the information in the returns or reports. The bill limits the use of that information by a municipality, county, or local governmental entity to its use in a manner that maintains the information's confidential nature. The bill prohibits public disclosure or release of the information.

C.S.H.B. 590 requires a municipality, county, or local governmental entity to submit the request not later than the 90th day after the date the municipality, county, or local governmental entity discovers a reallocation or refund. The bill requires the comptroller to provide the requested returns and reports not earlier than the 30th day or later than the 90th day after the date the comptroller receives a request and to notify each affected taxpayer and affected municipality, county, or local governmental entity of a request. The bill authorizes the comptroller to set and collect a reasonable fee to cover the expense of compiling and providing information for a request.

C.S.H.B. 590 makes its provisions applicable only if the comptroller reallocates local tax revenue from a municipality, county, or local governmental entity to another municipality, county, or local governmental entity or refunds local tax revenue to a municipality, county, or local governmental entity that was previously allocated to another municipality, county, or local governmental entity and the amount the comptroller reallocates or refunds is at least equal to the lesser of any one of the following: \$200,000; an amount equal to 10 percent of the revenue

received by the municipality, county, or local governmental entity during the calendar year preceding the calendar year in which the reallocation or refund is made; or an amount that increases or decreases the amount of revenue the municipality, county, or local governmental entity receives during a calendar month by more than 15 percent as compared to revenue received by the municipality, county, or local governmental entity during the same month in any previous year.

C.S.H.B. 590 makes the provisions added by the bill regarding the reallocation of municipal or local governmental entity tax revenue and the review of sales tax returns and reports by such a local taxing jurisdiction relating to such reallocation or refund applicable to the sales and use taxes imposed by special purpose taxing authorities.

C.S.H.B. 590 defines "local governmental entity."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 590 omits provisions included in the original authorizing a taxpayer to amend a sales tax report filed for a previous reporting period within the statute of limitations; requiring the amended report to be filed on the form prescribed by the comptroller of public accounts; and establishing certain requirements for the amended report.

C.S.H.B. 590 differs from the original by making the bill's provisions applicable only if the comptroller of public accounts reallocates local tax revenue from one local taxing jurisdiction to another taxing jurisdiction or refunds local tax revenue to one local taxing jurisdiction that was previously allocated to another local taxing jurisdiction in an amount above a specified threshold, whereas the original makes the bill's provisions applicable only if the comptroller intends to reallocate local tax revenue in that amount.

C.S.H.B. 590 differs from the original by making the applicability of the bill's provisions contingent, in part, on a minimum amount that the comptroller reallocates or refunds, whereas the original makes that applicability contingent on a minimum amount that the comptroller intends to reallocate as the result of a single instance.

C.S.H.B. 590 differs from the original, in a provision establishing the minimum amount of the reallocation as in the original or the minimum amount of the reallocation or refund as in the case of the substitute, for purposes of the provisions' applicability, by specifying as an alternative to a fixed dollar amount an amount equal to 10 percent of the revenue received by the local taxing jurisdiction during the calendar year preceding the calendar year in which the reallocation or refund is made, whereas the original specifies, as an alternative, an amount equal to 10 percent of the revenue received by the local taxing jurisdiction during the calendar year preceding the calendar year in which the reallocation will be made.

C.S.H.B. 590 contains a provision not included in the original specifying, as a third alternative for determining the minimum amount of a reallocation or refund for purposes of the provisions' applicability, an amount that increases or decreases the amount of revenue the local taxing jurisdiction receives in sales and use taxes during a calendar month by more than 15 percent as compared to revenue received by that jurisdiction during the same month in any previous year.

C.S.H.B. 590 omits provisions included in the original excluding a refund from the application of its provisions; requiring the comptroller to establish administrative procedures for the examination of amended sales tax reports that result in a reallocation of local tax revenue from one local governmental entity to another in an amount above a specified threshold; and requiring

the comptroller, under certain conditions, to send to a local taxing jurisdiction written notice that the comptroller intends to reallocate the revenue to another local taxing jurisdiction and establishing content requirements for such notice.

C.S.H.B. 590 differs from the original by authorizing a local taxing jurisdiction to request a review of all available sales tax returns and reports in the comptroller's possession filed by not more than five individual taxpayers doing business in that taxing jurisdiction that are included and identified from the information received from the comptroller and that relate to a reallocation or refund in a certain amount, whereas the original authorizes a local taxing jurisdiction that receives notice of a pending reallocation to request a review of the pending reallocation by submitting to the comptroller a written request for an independent audit review on the issue of whether the original allocation of the revenue was incorrect.

C.S.H.B. 590 differs from the original by requiring the local taxing jurisdiction to submit the request to review tax returns and records not later than the 90th day after the date the jurisdiction discovers a reallocation or refund, whereas the original requires the local taxing jurisdiction to submit the request for an independent audit review not later than the 30th day after the date the jurisdiction receives the notice of the pending reallocation.

C.S.H.B. 590 differs from the original by requiring the comptroller, not earlier than the 30th day or later than the 90th day after the date the comptroller receives a request, to provide the requested returns and reports for the local taxing jurisdiction's review, whereas the original requires the comptroller, not earlier than the 30th day or later than the 90th day after the date the comptroller receives a request for an independent audit review, to conduct a review on whether the original allocation of the revenue was incorrect. The substitute contains a provision not included in the original requiring the comptroller to provide the returns and records requested regardless of whether the information is confidential under state law.

C.S.H.B. 590 differs from the original by requiring the comptroller to notify each affected taxpayer and affected local taxing jurisdiction of a local taxing jurisdiction's request for sales tax returns and records and authorizing the comptroller to set and collect a reasonable fee to cover the expense of compiling and providing the requested information, whereas the original requires the comptroller to notify each affected taxpayer and affected taxing jurisdiction of the independent audit review, authorizes each affected taxpayer and affected jurisdiction to participate in the review, and requires the comptroller, after the conclusion of the review, to notify each affected jurisdiction whether the reallocation will occur.

C.S.H.B. 590 differs from the original by providing an effective date of September 1, 2011, for the bill's provisions, whereas the original provides an effective date of January 1, 2012.