

AN ACT

relating to the consummation of sales for purposes of local sales and use taxes and to the reallocation of those taxes.

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

SECTION 1. Section 321.002, Tax Code, is amended to read as follows:

Sec. 321.002. DEFINITIONS. (a) In this chapter:

(1) "Additional municipal sales and use tax" means only the additional tax authorized by Section 321.101(b).

(2) "Municipality" includes any incorporated city, town, or village.

(3) "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant. An outlet, office, facility, or any location that contracts with a retail or commercial business ~~[engaged in activities to which this chapter applies]~~ to process for that business invoices, purchase orders, [or] bills of lading, or other equivalent records onto which sales tax is added,

1 including an office operated for the purpose of buying and selling
2 taxable goods to be used or consumed by the retail or commercial
3 business, is not a "place of business of the retailer" if the
4 comptroller determines that the outlet, office, facility, or
5 location functions or exists to avoid the tax imposed by this
6 chapter or to rebate a portion of the tax imposed by this chapter to
7 the contracting business. Notwithstanding any other provision of
8 this subdivision, a kiosk is not a "place of business of the
9 retailer." In this subdivision, "kiosk" means a small stand-alone
10 area or structure that:

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

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

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

18 (b) Words used in this chapter and defined by Chapter 151
19 have the meanings assigned by Chapter 151.

20 SECTION 2. Subchapter F, Chapter 321, Tax Code, is amended
21 by adding Section 321.510 to read as follows:

22 Sec. 321.510. REALLOCATION OF MUNICIPAL OR LOCAL
23 GOVERNMENTAL ENTITY TAX REVENUE. (a) In this section, "local
24 governmental entity" includes any governmental entity created by
25 the legislature that has a limited purpose or function, that has a
26 defined or restricted geographic territory, and that is authorized
27 by law to impose a local sales and use tax the imposition,

1 computation, administration, enforcement, and collection of which
2 is governed by this chapter.

3 (b) This section applies only if:

4 (1) the comptroller:

5 (A) reallocates local tax revenue from a
6 municipality or local governmental entity to another municipality
7 or local governmental entity; or

8 (B) refunds local tax revenue that was previously
9 allocated to a municipality or local governmental entity; and

10 (2) the amount the comptroller reallocates or refunds
11 is at least equal to the lesser of:

12 (A) \$200,000;

13 (B) an amount equal to 10 percent of the revenue
14 received by the municipality or local governmental entity under
15 this chapter during the calendar year preceding the calendar year
16 in which the reallocation or refund is made; or

17 (C) an amount that increases or decreases the
18 amount of revenue the municipality or local governmental entity
19 receives under this chapter during a calendar month by more than 15
20 percent as compared to revenue received by the municipality or
21 local governmental entity during the same month in any previous
22 year.

23 (c) Subject to the criteria provided by this section, a
24 municipality or local governmental entity may request a review of
25 all available sales tax returns and reports in the comptroller's
26 possession filed by not more than five individual taxpayers doing
27 business in the municipality or local governmental entity that are

1 included and identified by the municipality or local governmental
2 entity from the information received from the comptroller under
3 Section 321.3022 and that relate to a reallocation or refund in an
4 amount described by Subsection (b).

5 (d) The comptroller shall provide the returns and reports
6 requested under Subsection (c) for review regardless of whether the
7 information in the returns or reports is confidential under state
8 law, including Sections 111.006 and 151.027.

9 (e) The provision of confidential information to a
10 municipality or local governmental entity under this section does
11 not affect the confidential nature of the information in the
12 returns or reports. A municipality or local governmental entity
13 shall use the information only in a manner that maintains the
14 confidential nature of the information and may not disclose or
15 release the information to the public.

16 (f) A municipality or local governmental entity must submit
17 the request under Subsection (c) not later than the 90th day after
18 the date the municipality or local governmental entity discovers a
19 reallocation or refund described by Subsection (b).

20 (g) Not earlier than the 30th day or later than the 90th day
21 after the date the comptroller receives a request under Subsection
22 (c), the comptroller shall provide the requested returns and
23 reports to the requesting municipality or local governmental entity
24 for review.

25 (h) The comptroller may set and collect from a municipality
26 or local governmental entity a reasonable fee to cover the expense
27 of compiling and providing information under this section.

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

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

- 6 (1) Section 321.002(a)(3);
- 7 (2) Section 321.003;
- 8 (3) Section 321.203;
- 9 (4) Section 321.205(d);
- 10 (5) Section 321.208;
- 11 (6) Section 321.209;
- 12 (7) Section 321.303;
- 13 (8) Section 321.304; ~~and~~
- 14 (9) Section 321.305; and
- 15 (10) Section 321.510.

16 SECTION 4. Subchapter F, Chapter 323, Tax Code, is amended
17 by adding Section 323.510 to read as follows:

18 Sec. 323.510. REALLOCATION OF COUNTY OR LOCAL GOVERNMENTAL
19 ENTITY TAX REVENUE. (a) In this section, "local governmental
20 entity" includes any governmental entity created by the legislature
21 that has a limited purpose or function, that has a defined or
22 restricted geographic territory, and that is authorized by law to
23 impose a local sales and use tax the imposition, computation,
24 administration, enforcement, and collection of which is governed by
25 this chapter.

26 (b) This section applies only if:

- 27 (1) the comptroller:

1 (A) reallocates local tax revenue from a county
2 or local governmental entity to another county or local
3 governmental entity; or

4 (B) refunds local tax revenue that was previously
5 allocated to a county or local governmental entity; and

6 (2) the amount the comptroller reallocates or refunds
7 is at least equal to the lesser of:

8 (A) \$200,000;

9 (B) an amount equal to 10 percent of the revenue
10 received by the county or local governmental entity under this
11 chapter during the calendar year preceding the calendar year in
12 which the reallocation or refund is made; or

13 (C) an amount that increases or decreases the
14 amount of revenue the county or local governmental entity receives
15 under this chapter during a calendar month by more than 15 percent
16 as compared to revenue received by the county or local governmental
17 entity during the same month in any previous year.

18 (c) Subject to the criteria provided by this section, a
19 county or local governmental entity may request a review of all
20 available sales tax returns and reports in the comptroller's
21 possession filed by not more than five individual taxpayers doing
22 business in the county or local governmental entity that are
23 included and identified by the county or local governmental entity
24 from the information received from the comptroller under Section
25 323.3022 and that relate to a reallocation or refund in an amount
26 described by Subsection (b).

27 (d) The comptroller shall provide the returns and reports

1 requested under Subsection (c) for review regardless of whether the
2 information in the returns or reports is confidential under state
3 law, including Sections 111.006 and 151.027.

4 (e) The provision of confidential information to a county or
5 local governmental entity under this section does not affect the
6 confidential nature of the information in the returns or reports. A
7 county or local governmental entity shall use the information only
8 in a manner that maintains the confidential nature of the
9 information and may not disclose or release the information to the
10 public.

11 (f) A county or local governmental entity must submit the
12 request under Subsection (c) not later than the 90th day after the
13 date the county or local governmental entity discovers a
14 reallocation or refund described by Subsection (b).

15 (g) Not earlier than the 30th day or later than the 90th day
16 after the date the comptroller receives a request under Subsection
17 (c), the comptroller shall provide the requested returns and
18 reports to the requesting county or local governmental entity for
19 review.

20 (h) The comptroller may set and collect from a county or
21 local governmental entity a reasonable fee to cover the expense of
22 compiling and providing information under this section.

23 SECTION 5. Section 1 of this Act takes effect September 1,
24 2011.

25 SECTION 6. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 590 was passed by the House on May 11, 2011, by the following vote: Yeas 149, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 590 on May 25, 2011, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 590 was passed by the Senate, with amendments, on May 20, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor