

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 11, 2011**

**TO:** Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2813** by Christian (Relating to requiring the comptroller to provide notice to a person who will be regarded as a retailer or seller for purposes of sales and use tax.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2813, As Introduced: a negative impact of (\$345,500,000) through the biennium ending August 31, 2013.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	(\$146,400,000)
2013	(\$199,100,000)
2014	(\$229,600,000)
2015	(\$258,200,000)
2016	(\$289,400,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue (Loss) from <i>General Revenue Fund 1</i>	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties and Special Districts</i>
2012	(\$146,400,000)	(\$28,500,000)	(\$8,900,000)	(\$5,000,000)
2013	(\$199,100,000)	(\$38,800,000)	(\$12,100,000)	(\$6,800,000)
2014	(\$229,600,000)	(\$44,700,000)	(\$14,000,000)	(\$7,800,000)
2015	(\$258,200,000)	(\$50,300,000)	(\$15,700,000)	(\$8,800,000)
2016	(\$289,400,000)	(\$56,400,000)	(\$17,600,000)	(\$9,900,000)

**Fiscal Analysis**

The bill would amend Chapter 151 of the Tax Code, regarding sales and use taxes.

The bill would add new Section 151.024(b) to require the Comptroller's Office to provide at least 90 days notice to a dealer, distributor, supervisor, or employer before a salesman, representative, peddler, or canvasser may be regarded as an agent of the dealer, distributor, supervisor, or employer.

The bill would add new Section 151.024(c) to provide an exception to Section 151.024(b) when a salesman, representative, peddler, or canvasser is the agent in fact of a dealer, distributor, supervisor, or employer. Agent in fact would occur when the salesman, representative, peddler, or canvasser has been authorized to act on behalf of and to bind a dealer, distributor, supervisor, or employer.

The bill would have immediate effect if it receives the requisite two-thirds votes of each house, otherwise it would take effect September 1, 2011.

## **Methodology**

The bill would eliminate the ability to back assess for unremitted taxes and penalties after the discovery that a business has nexus with the state via salesmen, representatives, or similar agents. This ability is a critical tool for tax enforcement. If businesses without sales tax permits and that employ or contract with salesmen, representatives, or other agents cannot be deemed responsible to collect and remit state taxes until 90 days after their nexus with the state via such agents has been discovered by auditors, the incentive for voluntary compliance with sales tax collection responsibilities by out-of-state businesses will be substantially reduced or eliminated.

Data on the annual voluntary disclosure agreement payments and nexus audit collections from firms whose nexus with the state was discovered through business activity research and who were then assessed for back taxes, as well as data on remittances from permitted out-of-state vendors, were used to estimate the expected decline in annual sales tax collections.

## **Local Government Impact**

The bill would cause a proportional loss of sales and use tax revenue to local taxing jurisdictions.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, KK, SD