

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 21, 2011

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

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

IN RE: SB1798 by West (Relating to retailers engaged in business in this state for purposes of sales and use taxes.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1798, Committee Report 1st House, Substituted: a positive impact of \$20,000,000 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	\$8,000,000
2013	\$12,000,000
2014	\$14,000,000
2015	\$17,000,000
2016	\$20,000,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund 1</i>	Probable Revenue Gain from <i>Cities</i>	Probable Revenue Gain from <i>Transit Authorities</i>	Probable Revenue Gain from <i>Counties and Special Districts</i>
2012	\$8,000,000	\$1,600,000	\$500,000	\$300,000
2013	\$12,000,000	\$2,300,000	\$700,000	\$400,000
2014	\$14,000,000	\$2,700,000	\$800,000	\$500,000
2015	\$17,000,000	\$3,300,000	\$1,000,000	\$600,000
2016	\$20,000,000	\$3,900,000	\$1,200,000	\$700,000

Fiscal Analysis

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

The bill would amend Section 151.008(b) to provide that the terms "seller" and "retailer" include a person who, by agreement with an owner of tangible personal property, has been entrusted with possession of and authority to sell, lease, or rent the property without additional action on the part of the owner.

The bill would amend Section 151.107(a)(2) to provide that a retailer engaged in business in this state includes a retailer with a representative or other agent in the state fulfilling orders for a taxable item.

The bill would amend Section 151.107(a)(3) to provide that a retailer engaged in business in this state includes a retailer who derives receipts or receives compensation from the sale, use, lease, or rental of tangible personal property in the state.

The bill would amend Section 151.107(a) by adding new Subdivision (7) to provide that a retailer engaged in business in this state includes a retailer who holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the Texas facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, including exchanging returned merchandise.

The bill would amend Section 151.107(a) by adding new Subdivision (8) to provide that a retailer engaged in business in this state includes a retailer who holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution house, sales house, warehouse, or similar location in this state at which business is conducted and that delivers property sold by the retailer.

The bill would amend Section 151.107 by adding new Subsection (a-1) to provide for a rebuttable presumption that a retailer that is part of an affiliated group is engaged in business in this state if another member entity of the affiliated group is a retailer engaged in business in this state.

The bill would amend Section 151.107 by adding new Subsection (d) to provide that "affiliated group" has the meaning assigned by Section 171.0001, that "ownership" includes direct and indirect ownership through a parent entity, subsidiary, or affiliate, and that "substantial" means with respect to an ownership interest, an interest sufficient to require a beneficial owner to file a disclosure statement under 15 U.S.C. Section 78p.

The bill would take effect January 1, 2012.

Methodology

Currently, a few retailers with stores or other facilities in the state are organized into separate subsidiaries or affiliates for online retailing versus in-store business or other activity in facilitation of sales and assert that the online subsidiaries lack nexus with the state. These businesses do not collect and remit tax on online sales into Texas. While the Comptroller contends that the online units do have nexus under current law, the issue remains contested. If the issue remains unresolved and these sellers continue to decline to collect and remit tax on their online sales into Texas, it is expected that other retailers with stores in the state will separate their online operations into separate subsidiaries and cease collecting and remitting tax on their online sales.

The provisions of this bill remove any ambiguity in current law regarding nexus of online subsidiaries or affiliates of retailers with nexus. The estimate below reflects modestly higher tax collections expected if tax base erosion is stemmed in part by precluding assertions of lack of nexus for online subsidiaries or affiliates of retailers with business locations in the state.

Local Government Impact

There would be a proportional gain of sales and use tax revenue to local taxing jurisdictions.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, ESi, KK, SD