

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Thompson

H.B. No. 590

A BILL TO BE ENTITLED

AN ACT

relating to amended sales tax reports and the reallocation of sales tax revenue.

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

SECTION 1. Subchapter F, Chapter 321, Tax Code, is amended by adding Section 321.510 to read as follows:

Sec. 321.510. REALLOCATION OF MUNICIPAL OR LOCAL GOVERNMENTAL ENTITY TAX REVENUE. (a) In this section, "local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, that has a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax the imposition, computation, administration, enforcement, and collection of which is governed by this chapter.

(b) This section applies only if:

(1) the comptroller:

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

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

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

(A) \$200,000;

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

5                   (C) an amount that increases or decreases the  
6 amount of revenue the municipality or local governmental entity  
7 receives under this chapter during a calendar month by more than 15  
8 percent as compared to revenue received by the municipality or  
9 local governmental entity during the same month in any previous  
10 year.

11           (c) Subject to the criteria provided by this section, a  
12 municipality or local governmental entity may request a review of  
13 all available sales tax returns and reports in the comptroller's  
14 possession filed by not more than five individual taxpayers doing  
15 business in the municipality or local governmental entity that are  
16 included and identified by the municipality or local governmental  
17 entity from the information received from the comptroller under  
18 Section 321.3022 and that relate to a reallocation or refund in an  
19 amount described by Subsection (b).

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

24           (e) The provision of confidential information to a  
25 municipality or local governmental entity under this section does  
26 not affect the confidential nature of the information in the  
27 returns or reports. A municipality or local governmental entity

1 shall use the information only in a manner that maintains the  
2 confidential nature of the information and may not disclose or  
3 release the information to the public.

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

8 (g) Not earlier than the 30th day or later than the 90th day  
9 after the date the comptroller receives a request under Subsection  
10 (c), the comptroller shall provide the requested returns and  
11 reports to the requesting municipality or local governmental entity  
12 for review.

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

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

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

- 21 (1) Section 321.002(a)(3);
- 22 (2) Section 321.003;
- 23 (3) Section 321.203;
- 24 (4) Section 321.205(d);
- 25 (5) Section 321.208;
- 26 (6) Section 321.209;
- 27 (7) Section 321.303;

1 (8) Section 321.304; [~~and~~]

2 (9) Section 321.305; and

3 (10) Section 321.510.

4 SECTION 3. Subchapter F, Chapter 323, Tax Code, is amended  
5 by adding Section 323.510 to read as follows:

6 Sec. 323.510. REALLOCATION OF COUNTY OR LOCAL GOVERNMENTAL  
7 ENTITY TAX REVENUE. (a) In this section, "local governmental  
8 entity" includes any governmental entity created by the legislature  
9 that has a limited purpose or function, that has a defined or  
10 restricted geographic territory, and that is authorized by law to  
11 impose a local sales and use tax the imposition, computation,  
12 administration, enforcement, and collection of which is governed by  
13 this chapter.

14 (b) This section applies only if:

15 (1) the comptroller:

16 (A) reallocates local tax revenue from a county  
17 or local governmental entity to another county or local  
18 governmental entity; or

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

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

23 (A) \$200,000;

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

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

6           (c) Subject to the criteria provided by this section, a  
7 county or local governmental entity may request a review of all  
8 available sales tax returns and reports in the comptroller's  
9 possession filed by not more than five individual taxpayers doing  
10 business in the county or local governmental entity that are  
11 included and identified by the county or local governmental entity  
12 from the information received from the comptroller under Section  
13 323.3022 and that relate to a reallocation or refund in an amount  
14 described by Subsection (b).

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

19           (e) The provision of confidential information to a county or  
20 local governmental entity under this section does not affect the  
21 confidential nature of the information in the returns or reports. A  
22 county or local governmental entity shall use the information only  
23 in a manner that maintains the confidential nature of the  
24 information and may not disclose or release the information to the  
25 public.

26           (f) A county or local governmental entity must submit the  
27 request under Subsection (c) not later than the 90th day after the

1 date the county or local governmental entity discovers a  
2 reallocation or refund described by Subsection (b).

3 (g) Not earlier than the 30th day or later than the 90th day  
4 after the date the comptroller receives a request under Subsection  
5 (c), the comptroller shall provide the requested returns and  
6 reports to the requesting county or local governmental entity for  
7 review.

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

11 SECTION 4. This Act takes effect September 1, 2011.

# ADOPTED

MAY 20 2011

FLOOR AMENDMENT NO. 1

*Atiny Spaw*  
Secretary of the Senate

BY:

*[Signature]*

1 Amend House Bill 590 (senate committee printing) by adding the  
2 following new appropriately numbered SECTIONS and renumbering  
3 subsequent SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_ Section 321.002, Tax Code, is amended to  
5 read as follows:

6 Sec. 321.002. DEFINITIONS.

7 (a) In this chapter:

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

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

12 (3) "Place of business of the retailer" means an  
13 established outlet, office, or location operated by the retailer  
14 or the retailer's agent or employee for the purpose of receiving  
15 orders for taxable items and includes any location at which  
16 three or more orders are received by the retailer during a  
17 calendar year. A warehouse, storage yard, or manufacturing  
18 plant is not a "place of business of the retailer" unless at  
19 least three orders are received by the retailer during the  
20 calendar year at the warehouse, storage yard, or manufacturing  
21 plant. An outlet, office, facility, or any location that  
22 contracts with a retail or commercial business [~~engaged in~~  
23 ~~activities to which this chapter applies~~] to process for that  
24 business invoices, purchase orders, [~~or~~] bills of lading, or  
25 other equivalent records onto which sales tax is added,  
26 including an office operated for the purpose of buying and  
27 selling taxable goods to be used or consumed by the retail or  
28 commercial business, is not a "place of business of the  
29 retailer" if the comptroller determines that the outlet, office,

1 facility, or location functions or exists to avoid the tax  
2 imposed by this chapter or to rebate a portion of the tax  
3 imposed by this chapter to the contracting  
4 business. Notwithstanding any other provision of this  
5 subdivision, a kiosk is not a "place of business of the  
6 retailer." In this subdivision, "kiosk" means a small stand-  
7 alone area or structure that:

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

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

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

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

18 SECTION \_\_\_\_ . SECTION \_\_\_\_ as added by this amendment takes  
19 effect September 1, 2011.



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

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

**May 23, 2011**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

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

**IN RE: HB590** by Thompson (Relating to amended sales tax reports and the reallocation of sales tax revenue. ), **As Passed 2nd House**

<p><b>Depending upon the amount of fees that the Comptroller could collect from local government entities, there could be an indeterminate fiscal impact to the state.</b></p>
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The bill would amend Chapters 321, 322, and 323 of the Tax Code, to provide for a local governmental entity to request a review of all sales tax returns and reports filed by not more than five taxpayers that relate to certain reallocations and refunds of local sales tax revenue, and to clarify that a business location engaged in certain activities is not a place of business of a retailer.

New Sections 321.510 and 323.510 would provide that a local governmental entity may request related tax returns for review if the Comptroller reallocates or refunds tax revenues that equal the lesser of: 1) \$200,000; 2) 10 percent of the revenue received by the entity during the prior calendar year; or 3) an amount that changes the revenue received during a calendar month by more than 15 percent as compared with the same month in any previous year. The Comptroller would be required to provide the requested taxpayer information. Provision of confidential information under the new sections would not affect the confidential nature of the information. The Comptroller would be authorized to set and collect a reasonable fee from local governmental entities for the expense of compiling and providing information under these sections.

The bill would amend Section 321.002 to provide that any business location that contracts with a retail or commercial business to process invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used by the retail or commercial business, is not a "place of business of the retailer" if the Comptroller determines that the location functions to avoid the tax imposed by Chapter 321 or to rebate a portion of such tax to the contracting business.

The fiscal impact from the fees which the Comptroller could collect from local governmental entities cannot be determined. The provisions of the bill pertaining to information requests would have no revenue implications.

The Comptroller indicates they would need an additional 5 FTEs to process and handle the increased number of returns filed and the requests associated with reallocation of local sales and use tax to local governmental entities.

The bill would take effect September 1, 2011.

**Local Government Impact**

The provision excluding certain business locations from the definition of a place of business may result in greater sales tax revenues for some municipalities but in amounts that cannot be determined.

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

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

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

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

**May 16, 2011**

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

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

**IN RE: HB590** by Thompson (Relating to amended sales tax reports and the reallocation of sales tax revenue.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend Chapters 321, 322, and 323 of the Tax Code, to provide for a local governmental entity to request a review of all sales tax returns and reports filed by not more than five taxpayers that relate to certain reallocations and refunds of local sales tax revenue.

New Sections 321.510 and 323.510 would provide that a local governmental entity may request related tax returns for review if the Comptroller reallocates or refunds tax revenues that equal the lesser of: 1) \$200,000; 2) 10 percent of the revenue received by the entity during the prior calendar year; or 3) an amount that changes the revenue received during a calendar month by more than 15 percent as compared with the same month in any previous year. The Comptroller would be required to provide the requested taxpayer information. Provision of confidential information under the new sections would not affect the confidential nature of the information. The Comptroller would be authorized to set and collect a reasonable fee from local governmental entities for the expense of compiling and providing information under these sections.

The Comptroller indicates they would need an additional 5 FTEs to process and handle the increased number of returns filed and the requests associated with reallocation of local sales and use tax to local governmental entities.

The bill would take effect September 1, 2011.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

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

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

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

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

**May 5, 2011**

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

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

**IN RE:** **HB590** by Thompson (relating to amended sales tax reports and the reallocation of sales tax revenue.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapters 321, 322, and 323 of the Tax Code, to provide for a local governmental entity to request a review of all sales tax returns and reports filed by not more than five taxpayers that relate to certain reallocations and refunds of local sales tax revenue.

New Sections 321.510 and 323.510 would provide that a local governmental entity may request related tax returns for review if the Comptroller reallocates or refunds tax revenues that equal the lesser of: 1) \$200,000; 2) 10 percent of the revenue received by the entity during the prior calendar year; or 3) an amount that changes the revenue received during a calendar month by more than 15 percent as compared with the same month in any previous year. The Comptroller would be required to provide the requested taxpayer information and to notify the affected taxpayers and other affected taxing entities of the request. Provision of confidential information under the new sections would not affect the confidential nature of the information. The Comptroller would be authorized to set and collect a reasonable fee from local governmental entities for the expense of compiling and providing information under these sections.

The Comptroller indicates they would need an additional 5 FTEs to process and handle the increased number of returns filed and the requests associated with reallocation of local sales and use tax to local governmental entities.

The bill would take effect September 1, 2011.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

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

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

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

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

**March 4, 2011**

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

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

**IN RE: HB590** by Thompson (Relating to amended sales tax reports and the reallocation of sales tax revenue.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB590, As Introduced: a negative impact of (\$8,578,666) through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

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

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	(\$6,628,348)
2013	(\$1,950,318)
2014	(\$1,950,318)
2015	(\$1,950,318)
2016	(\$1,950,318)

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

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2011
2012	(\$6,628,348)	31.0
2013	(\$1,950,318)	31.0
2014	(\$1,950,318)	31.0
2015	(\$1,950,318)	31.0
2016	(\$1,950,318)	31.0

**Fiscal Analysis**

The bill would amend Chapters 151, 321, 322, and 323 of the Tax Code, to allow for amended sales tax reports and for procedures governing reallocations of local sales taxes associated with the amended reports.

New Section 151.4065 would allow taxpayers to amend a tax report for a previous reporting period within the statute of limitations, and would require the amendment be signed and include an explanation for the amendment.

New Sections 321.510 and 323.510 would provide for notification of affected taxpayers and units of local government of pending reallocations of local sales tax revenues that exceed certain thresholds and for audit review of the pending reallocation upon request of an affected local government.

The bill would take effect January 1, 2012.

**Methodology**

The bill would not have a significant impact on sales tax revenue. The administrative cost estimate reflects the funds that would be necessary to hire 31 additional FTEs starting in fiscal year 2012 to 2016 for personnel salary costs for the Comptroller's Office. Personnel would be required in the Revenue Accounting, Tax Policy, and Audit divisions.

**Technology**

There would be a one-time technology cost to the Comptroller's Office of \$4,600,000 in fiscal year 2012 for programming/project management.

**Local Government Impact**

Local taxing units could experience a revenue gain or loss depending on the extent of reallocation of local sales tax revenue.

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

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

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

**TAX/FEE EQUITY NOTE**

**82ND LEGISLATIVE REGULAR SESSION**

**May 5, 2011**

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

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

**IN RE: HB590** by Thompson (relating to amended sales tax reports and the reallocation of sales tax revenue.), **Committee Report 1st House, Substituted**

Because the bill would not create or impact a state tax or fee, no comment from this office is required by the rules of the House as to the general effects of the proposal on the distribution of tax and fee burdens among individuals and businesses.

**Source Agencies:**

**LBB Staff:** JOB, KK

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

**TAX/FEE EQUITY NOTE**

**82ND LEGISLATIVE REGULAR SESSION**

**March 4, 2011**

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

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

**IN RE: HB590** by Thompson (Relating to amended sales tax reports and the reallocation of sales tax revenue.), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source Agencies:**

**LBB Staff:** JOB, KK