

BILL ANALYSIS

C.S.H.B. 1923
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Local governments rely on the comptroller of public accounts to collect and administer local sales taxes. Interested parties contend that as technology has changed, local governments have become more sophisticated in the way they use information and that many local entities now are in a better position to use sales tax information received by the comptroller from taxpayers to manage the tax dollars entrusted to the entities by the voters. C.S.H.B. 1923 seeks to promote greater cooperation and exchange between the comptroller and local governments regarding local sales tax collections, administration, and compliance.

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. 1923 amends the Tax Code to extend the comptroller of public accounts' authority to conduct investigations and audits relating to state sales and use taxes to include investigations and audits relating to local sales and use taxes for a municipality, county, or certain local transit authorities. The bill specifies that the delivery of complete audit and tax compliance information to a municipality, county, local transit authority, or other local governmental entity is not prohibited under confidentiality requirements for sales and use tax information.

C.S.H.B. 1923 expands the information required to be included in the additional quarterly report sent by the comptroller to a municipality that requests an additional report regarding each person who has remitted a local sales and use tax payment. The bill removes the requirement that a municipality report to the comptroller the name and address of a person doing business in the municipality who is not included in the comptroller's quarterly report and instead requires a municipality to report to the comptroller the name and address of a person doing business in the municipality who has wholly or partly collected or reported taxes incorrectly. The bill extends from 90 to 120 the number of days after receiving such a report the deadline for the comptroller to send to a municipality a response containing certain information regarding the comptroller's determination of the person's tax obligation and sets out the information required to be included in this response.

C.S.H.B. 1923 authorizes a municipality, if the municipality disagrees with the determination made by the comptroller regarding a taxpayer's obligation or delinquency or the amount of tax due that has been credited to the municipality's account, to petition the comptroller for a redetermination and establishes that, for purposes of the redetermination and other tax collection procedures, the municipality is a party having a direct interest in the comptroller's determination. The bill authorizes the comptroller to set and collect from the municipality or other local governmental entity reasonable fees to cover the expense of compiling and providing information or providing access to the administrative process.

C.S.H.B. 1923 includes among the information required to be provided on request by the comptroller to a municipality or other local governmental taxing entity that has adopted a municipal sales and use tax information relating to the gross sales, taxable sales, and taxable purchases by each person doing business in the municipality or entity by individual outlet as reported to the comptroller on a sales and use tax return. The bill requires the comptroller on request to provide to a municipality or other entity a sales and use tax audit report, including any supporting documentation, related to applicable local sales tax collections and corrections and removes the requirement that the comptroller provide tax payment information for certain persons doing business in an area that is part of a special agreement, zone, or district as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments. The bill includes among the limited uses for which sales and use tax information received by a municipality from the comptroller may be used the determination of a taxpayer's compliance with statutory provisions relating to the location in which the sale or use of a taxable item is consummated.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1923 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 111.0045, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller may delegate to a person employed or designated by a municipality or county the power to perform duties as provided by Sections 321.302(c)(4) and 323.302(c)(4).

SECTION 2. Section 151.023(b), Tax Code, is amended.

SECTION 3. Section 151.027(c), Tax Code, is amended to read as follows:

(c) This section does not prohibit:
(1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, by a tax official of the United Mexican States, or by an official of the United States if a reciprocal agreement exists;
(2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Same as introduced version.

SECTION 2. Section 151.027(c), Tax Code, is amended to read as follows:

(c) This section does not prohibit:
(1) the examination of information, if authorized by the comptroller, by another state officer or law enforcement officer, by a tax official of another state, by a tax official of the United Mexican States, or by an official of the United States if a reciprocal agreement exists;
(2) the delivery to a taxpayer, or a taxpayer's authorized representative, of a copy of a report or other paper filed by the taxpayer under this chapter;

(3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;

(4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this chapter against the same taxpayer who furnished the information;

(5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected;

(6) the delivery of information, including complete audit and tax compliance information, to a municipality, county, or other local governmental entity in accordance with Section 321.3022, ~~321.3023~~, 322.2022, ~~[or]~~ 323.3022, ~~or 323.3023~~; or

(7) the release of information in or derived from a record, report, or other instrument required to be furnished under this chapter by a governmental body, as that term is defined in Section 552.003, Government Code.

SECTION 4. Section 321.302, Tax Code, is amended by amending Subsections (b) and (c) and adding Subsections (e) and (f) to read as follows:

(b) If a municipality requests an additional report, the comptroller shall make an additional quarterly report to the municipality including the name, address, and account number, if any, of, and the amount of tax received and the amount due to the municipality from, each person doing business in the municipality who has failed to pay the tax under this chapter to the municipality or under Chapter 151. The additional report must also include statements:

(1) showing whether or not there has been a partial tax payment, and, if so, the proportional allocation to the municipality of the partial payment, by the delinquent taxpayer;

(2) showing whether or not the taxpayer is delinquent in the payment of sales and use taxes to the state; ~~[and]~~

(3) the publication of statistics classified to prevent the identification of a particular report or items in a particular report;

(4) the use of records, reports, or information secured, derived, or obtained by the attorney general or the comptroller in an action under this chapter against the same taxpayer who furnished the information;

(5) the delivery to a successor, receiver, executor, administrator, assignee, or guarantor of a taxpayer of information about items included in the measure and amounts of any unpaid tax or amounts of tax, penalties, and interest required to be collected;

(6) the delivery of information, including complete audit and tax compliance information, to a municipality, county, or other local governmental entity in accordance with Section ~~321.302~~, 321.3022, 322.2022, or 323.3022; or

(7) the release of information in or derived from a record, report, or other instrument required to be furnished under this chapter by a governmental body, as that term is defined in Section 552.003, Government Code.

SECTION 3. Section 321.302, Tax Code, is amended by amending Subsections (b) and (c) and adding Subsections (e) and (f) to read as follows:

(b) If a municipality requests an additional report, the comptroller shall make an additional quarterly report to the municipality including the name, address, and account number, if any, of, and the amount of tax received and the amount due to the municipality from, each person doing business in the municipality who has failed to pay the tax under this chapter to the municipality or under Chapter 151. The additional report must also include statements:

(1) showing whether or not there has been a partial tax payment, and, if so, the proportional allocation to the municipality of the partial payment, by the delinquent taxpayer;

(2) showing whether or not the taxpayer is delinquent in the payment of sales and use taxes to the state; ~~[and]~~

(3) describing the steps taken by the comptroller to collect the delinquent taxes;

(4) showing the tax periods covered by the delinquencies and the amount of delinquency in each period; and

(5) if the comptroller has not made the appropriate allocation to the municipality, the date by which the comptroller will make that allocation.

(c) If a municipality determines that a person doing business in the municipality has wholly or partly collected or reported taxes incorrectly under this chapter [is not included in a comptroller's report], the municipality shall report to the comptroller the name and address of the person. Within 120 [90] days after receiving the report from a municipality, the comptroller shall send to the municipality:

(1) an explanation as to why the person is not obligated for the municipal tax;

(2) a statement that the person is obligated for the municipal tax and the tax is delinquent that includes:

(A) a description of the action the comptroller is taking to collect the delinquent tax;

(B) an estimate of the delinquent tax due to the municipality and the tax periods covered by the delinquency;

(C) the date by which the comptroller will complete the review and the date by which the comptroller will make all delinquent funds available to the municipality; and

(D) the date and periods covered by the most recent audit of the person by the comptroller or a statement that the comptroller has not conducted an audit of the person; [øf]

(3) a certification that the person is obligated for the municipal tax, the periods for which the person is obligated, [and that] the [full] amount of the tax due in each period that the person is obligated, and a statement as to whether the tax due has been credited to the municipality's account; or

(4) a statement authorizing a person employed by or designated by the municipality to perform the duties assigned to the comptroller under Sections 111.004

(3) describing the steps taken by the comptroller to collect the delinquent taxes; and

(4) showing the tax periods covered by the delinquencies and the amount of delinquency in each period.

(c) If a municipality determines that a person doing business in the municipality has wholly or partly collected or reported taxes incorrectly under this chapter [is not included in a comptroller's report], the municipality shall report to the comptroller the name and address of the person. Within 120 [90] days after receiving the report from a municipality, the comptroller shall send to the municipality:

(1) an explanation as to why the person is not obligated for the municipal tax;

(2) a statement that the person is obligated for the municipal tax and the tax is delinquent that includes:

(A) a description of the action the comptroller is taking to collect the delinquent tax;

(B) the date by which the comptroller will begin the initial review; and

(C) the date and periods covered by the most recent audit of the person by the comptroller if the comptroller has conducted an audit of the person during the previous 10 years, or a statement that the comptroller has not conducted an audit of the person during the previous 10 years; [øf]

(3) a certification that the person is obligated for the municipal tax, the periods for which the person is obligated, [and that] the [full] amount of the tax due in each period that the person is obligated, and a statement as to whether the tax due has been credited to the municipality's account; or

and 151.023.

(e) If a municipality disagrees with a determination made by the comptroller under Subsection (c), the municipality may petition the comptroller for a redetermination under Section 111.009. For purposes of that section and any related provisions in Chapter 111, a municipality is a party having a direct interest in the comptroller's determination.

(f) The comptroller may set and collect from the municipality or other local governmental entity reasonable fees to cover the expense of compiling and providing information or providing access to the administrative appeals process authorized by this section.

SECTION 5. Sections 321.3022(a-1) and (c), Tax Code, are amended to read as follows:

(a-1) Except as otherwise provided by this section, the comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; ~~and~~

(2) information relating to the gross sales, taxable sales, and taxable purchases by each person doing business in the municipality by individual outlet as reported to the comptroller on a sales and use tax return; and

(3) any other information as provided by

(4) an acknowledgment that by providing the report to the comptroller, the municipality has reserved the right to receive from the comptroller any tax due to the municipality and collected by the comptroller from the person that is the subject of the report for the four years preceding the date the comptroller received the report from the municipality.

(e) If a municipality disagrees with a determination made by the comptroller under Subsection (c) regarding a taxpayer's obligation or delinquency or the amount of tax due that has been credited to the municipality's account, the municipality may petition the comptroller for a redetermination under Section 111.009. For purposes of that section and any related provisions in Chapter 111, a municipality is a party having a direct interest in the comptroller's determination.

(f) The comptroller may set and collect from the municipality or other local governmental entity reasonable fees to cover the expense of compiling and providing information or providing access to the administrative process authorized by this section.

SECTION 4. Sections 321.3022(a-1), (c), and (f), Tax Code, are amended to read as follows:

(a-1) Except as otherwise provided by this section, the comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; ~~and~~

(2) information relating to the gross sales, taxable sales, and taxable purchases by each person doing business in the municipality by individual outlet as reported to the comptroller on a sales and use tax return; and

(3) any other information as provided by

this section.

(c) The comptroller on request shall provide to a municipality or other local governmental entity a sales and use tax audit report, including any supporting documentation, related to applicable local sales tax collections and corrections [shall provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments].

SECTION 6. Subchapter D, Chapter 321, Tax Code, is amended by adding Section 321.3023 to read as follows:

Sec. 321.3023. CLARIFICATION REQUEST. (a) A municipality or other local governmental entity that has adopted a tax under this chapter may submit to the comptroller a request for a determination of the appropriate location at which sales or uses were consummated in accordance with Sections 321.203 and 321.205. The request may include a question in relation to specific sales or uses or may include a fact pattern relating to sales and uses.

(b) The comptroller shall respond to the request by a municipality or other local governmental entity under this section not later than the 90th day after the date the comptroller receives the request. The response must include a statement of the comptroller's determination.

(c) A municipality may use the response from the comptroller in communications with a person, office, or outlet to encourage or compel compliance with this chapter.

SECTION 7. Section 322.108(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the following apply to the taxes imposed by

this section.

(c) The comptroller on request shall provide to a municipality or other local governmental entity a sales and use tax audit report, including any supporting documentation, related to applicable local sales tax collections and corrections [shall provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments].

(f) Information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for determining a taxpayer's compliance with Sections 321.203 and 321.205, for internal auditing of a tax paid to the municipality or other local governmental entity under this chapter, or for the purpose described in Subsection (g).

No equivalent provision.

No equivalent provision.

this chapter in the same manner as applicable to a municipality under Chapter 321:

- (1) Section 321.002(a)(3);
- (2) Section 321.003;
- (3) Section 321.203;
- (4) Section 321.205(d);
- (5) Section 321.208;
- (6) Section 321.209;
- (7) Section 321.3023;
- (8) Section 321.303;
- (9) [~~8~~] Section 321.304;
- (10) [~~9~~] Section 321.305; and
- (11) [~~10~~] Section 321.510.

SECTION 8. Section 322.202(a), Tax Code, is amended to read as follows:

- (a) The comptroller shall report to a taxing entity on the entity's sales and use taxes by making substantially the same reports that are required to be made by the comptroller to a municipality under Sections 321.302(a), (b), and (c). A taxing entity that disagrees with a determination made by the comptroller in a report made under this section may petition the comptroller in the same manner and with the same authority and obligations as a municipality under Sections 321.302(e) and (f).

No equivalent provision.

SECTION 9. Sections 322.2022(a) and (c), Tax Code, are amended to read as follows:

- (a) Except as otherwise provided by this section, the comptroller on request shall provide to a taxing entity:
 - (1) information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in the area included in the entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; [~~and~~]
 - (2) information relating to the gross sales, taxable sales, and taxable purchases by each person doing business in the area included in the entity by individual outlet as reported to the comptroller on a sales and use tax return; and
 - (3) any other information as provided by this section.
- (c) The comptroller on request shall provide to a taxing entity a sales and use tax audit report, including any supporting documentation, related to applicable local

No equivalent provision.

~~sales tax collections and corrections [shall provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments].~~

SECTION 10. Section 323.302, Tax Code, is amended by amending Subsections (b) and (c) and adding Subsections (e) and (f) to read as follows:

No equivalent provision.

(b) If a county requests an additional report, the comptroller shall make an additional quarterly report to the county including the name, address, and account number, if any, of, and the amount of tax received and the amount due to the county from, each person doing business in the county who has failed to pay the tax under this chapter to the county or under Chapter 151. The additional report must also include statements:

(1) showing whether or not there has been a partial tax payment, and, if so, the proportional allocation to the county of the partial payment, by the delinquent taxpayer;

(2) showing whether or not the taxpayer is delinquent in the payment of sales and use taxes to the state; ~~and~~

(3) describing the steps taken by the comptroller to collect the delinquent taxes;

(4) showing the tax periods covered by the delinquencies and the amount of delinquency in each period; and

(5) if the comptroller has not made the appropriate allocation to the county, the date by which the comptroller will make that allocation.

(c) If a county determines that a person doing business in the county has wholly or partly collected or reported taxes incorrectly under this chapter ~~[is not included in a comptroller's report]~~, the county shall report to the comptroller the name and address of the person. Within 120 ~~[90]~~ days after receiving the report from a county, the comptroller shall send to the county:

(1) an explanation as to why the person is not obligated for the county tax;

(2) a statement that the person is obligated for the county tax and the tax is delinquent that includes:

(A) a description of the action the comptroller is taking to collect the delinquent tax;

(B) an estimate of the delinquent tax due to

the county and the tax periods covered by the delinquency;

(C) the date by which the comptroller will complete the review and the date by which the comptroller will make all delinquent funds available to the county; and

(D) the date and periods covered by the most recent audit of the person by the comptroller or a statement that the comptroller has not conducted an audit of the person; [or]

(3) a certification that the person is obligated for the county tax, the periods for which the person is obligated, [and that] the [full] amount of the tax due in each period that the person is obligated, and a statement as to whether the tax due has been credited to the county's account; or

(4) a statement authorizing a person employed by or designated by the county to perform the duties assigned to the comptroller under Sections 111.004 and 151.023.

(e) If a county disagrees with a determination made by the comptroller under Subsection (c), the county may petition the comptroller for a redetermination under Section 111.009. For purposes of that section and any related provisions in Chapter 111, a county is a party having a direct interest in the comptroller's determination.

(f) The comptroller may set and collect from the county or other local governmental entity reasonable fees to cover the expense of compiling and providing information or providing access to the administrative appeals process authorized by this section.

SECTION 11. Sections 323.3022(b) and (d), Tax Code, are amended to read as follows:

(b) Except as otherwise provided by this section, the comptroller on request shall provide to a county or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the county or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the county or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; [and]

No equivalent provision.

(2) information relating to the gross sales, taxable sales, and taxable purchases by each person doing business in the county by individual outlet as reported to the comptroller on a sales and use tax return; and
(3) any other information as provided by this section.

(d) The comptroller on request shall provide to a county or other local governmental entity a sales and use tax audit report, including any supporting documentation, related to applicable local sales tax collections and corrections [shall provide the information under Subsection (c) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments].

SECTION 12. Subchapter D, Chapter 323, Tax Code, is amended by adding Section 323.3023 to read as follows:

Sec. 323.3023. CLARIFICATION REQUEST. (a) A county or other local governmental entity that has adopted a tax under this chapter may submit to the comptroller a request for a determination of the appropriate location at which sales or uses were consummated in accordance with Sections 323.203 and 323.205. The request may include a question in relation to specific sales or uses or may include a fact pattern relating to sales and uses.

(b) The comptroller shall respond to the request by a county or other local governmental entity under this section not later than the 90th day after the date the comptroller receives the request. The response must include a statement of the comptroller's determination.

(c) A county may use the response from the comptroller in communications with a person, office, or outlet to encourage or compel compliance with this chapter.

SECTION 13. This Act takes effect September 1, 2013.

No equivalent provision.

SECTION 5. Same as introduced version.