

By: Deuell

S.B. No. 1634

A BILL TO BE ENTITLED

AN ACT

relating to the administration, collection, and enforcement of sales and use taxes.

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

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 to read as follows:

(b) For the purpose of determining the amount of tax collected and payable to the state and a municipality, county, or other local governmental entity, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter and Chapter 321, 322, or 323, the comptroller or a person authorized by the comptroller may:

(1) inspect at any time during business hours any business premises where a taxable event has occurred and examine, copy, and photograph the books, returns, records, papers, and equipment relating to the conduct in question; and

(2) require by delivery of written notice to the taxpayer or to an employee, representative, or agent of the taxpayer that, not later than the 10th working day after the date

1 the notice is delivered, the taxpayer produce to an agent or
2 designated representative of the comptroller for inspection the
3 books, records, papers, and returns relating to the taxable
4 activity stated in the notice.

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

7 (c) This section does not prohibit:

8 (1) the examination of information, if authorized by
9 the comptroller, by another state officer or law enforcement
10 officer, by a tax official of another state, by a tax official of
11 the United Mexican States, or by an official of the United States if
12 a reciprocal agreement exists;

13 (2) the delivery to a taxpayer, or a taxpayer's
14 authorized representative, of a copy of a report or other paper
15 filed by the taxpayer under this chapter;

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

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

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

27 (6) the delivery of information, including complete

1 audit and tax compliance information, to a municipality, county, or
2 other local governmental entity in accordance with Section
3 321.3022, 321.3023, 322.2022, [~~or~~] 323.3022, or 323.3023; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) a certification that the person is obligated for
26 the municipal tax, the periods for which the person is obligated,
27 [~~and that~~] the [~~full~~] amount of the tax due in each period that the

1 person is obligated, and a statement as to whether the tax due has
2 been credited to the municipality's account; or

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

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

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

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

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

23 (1) information relating to the amount of tax paid to
24 the municipality or other local governmental entity under this
25 chapter during the preceding or current calendar year by each
26 person doing business in the municipality or other local
27 governmental entity who annually remits to the comptroller state

1 and local sales tax payments of more than \$5,000; ~~and~~

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

6 (3) any other information as provided by this section.

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

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

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

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

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

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

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

- 9 (1) Section 321.002(a)(3);
- 10 (2) Section 321.003;
- 11 (3) Section 321.203;
- 12 (4) Section 321.205(d);
- 13 (5) Section 321.208;
- 14 (6) Section 321.209;
- 15 (7) Section 321.3023;
- 16 (8) Section 321.303;
- 17 (9) [~~(8)~~] Section 321.304;
- 18 (10) [~~(9)~~] Section 321.305; and
- 19 (11) [~~(10)~~] Section 321.510.

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

22 (a) The comptroller shall report to a taxing entity on the
23 entity's sales and use taxes by making substantially the same
24 reports that are required to be made by the comptroller to a
25 municipality under Sections 321.302(a), (b), and (c). A taxing
26 entity that disagrees with a determination made by the comptroller
27 in a report made under this section may petition the comptroller in

1 the same manner and with the same authority and obligations as a
2 municipality under Sections 321.302(e) and (f).

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

5 (a) Except as otherwise provided by this section, the
6 comptroller on request shall provide to a taxing entity:

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

12 (2) information relating to the gross sales, taxable
13 sales, and taxable purchases by each person doing business in the
14 area included in the entity by individual outlet as reported to the
15 comptroller on a sales and use tax return; and

16 (3) any other information as provided by this section.

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

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

26 (b) If a county requests an additional report, the
27 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:

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

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

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

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

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

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

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

25 (f) The comptroller may set and collect from the county or
26 other local governmental entity reasonable fees to cover the
27 expense of compiling and providing information or providing access

1 to the administrative appeals process authorized by this section.

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

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

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

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

17 (3) any other information as provided by this section.

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

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

27 Sec. 323.3023. CLARIFICATION REQUEST. (a) A county or

1 other local governmental entity that has adopted a tax under this
2 chapter may submit to the comptroller a request for a determination
3 of the appropriate location at which sales or uses were consummated
4 in accordance with Sections 323.203 and 323.205. The request may
5 include a question in relation to specific sales or uses or may
6 include a fact pattern relating to sales and uses.

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

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

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