

BILL ANALYSIS

C.S.H.B. 2153
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the ability of sellers who are not physically located in Texas to collect applicable sales and use taxes. It has been suggested that identifying the correct local taxing jurisdictions and calculating the total local use tax due may be challenging for these remote sellers. C.S.H.B. 2153 seeks to alleviate a remote seller's burden in calculating the local use tax in Texas by giving these sellers the option to collect taxes using a single local use tax rate.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 2 and 3 of this bill.

ANALYSIS

C.S.H.B. 2153 amends the Tax Code to provide for a single local use tax rate as an alternative to combined local use tax rates for computing the amount of local use taxes remote sellers are required to collect and to the allocation of tax revenue collected at that rate. The bill requires a remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item to compute the amount to collect and remit using the combined rate of all applicable local use taxes or, at the remote seller's election, the single local use tax rate published in the Texas Register as required by the bill. The bill defines "remote seller" to mean a seller who in its activities in Texas only:

- engages in regular or systematic solicitation of sales of taxable items in Texas by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or
- solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to state jurisdiction for purposes of collecting the taxes imposed on retailers engaged in business in Texas.

C.S.H.B. 2153 requires a remote seller who elects to use the single local use tax rate to notify the comptroller of public accounts before using that rate. The bill establishes that such an election applies to all sales of taxable items made by the remote seller unless the remote seller revokes the election by notifying the comptroller. The bill requires notice to the comptroller to be made in the form and manner provided by the comptroller. The bill establishes that the single local use

tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in Texas during the preceding state fiscal year. The bill requires the comptroller to publish in the Texas Register, before the beginning of a calendar year, notice of the single local use tax rate that will be in effect for that calendar year.

C.S.H.B. 2153 requires the comptroller, as soon as practicable after the end of a state fiscal year, to determine the estimated average rate of local sales and use taxes imposed in Texas during the preceding state fiscal year and sets out the formula for such a determination.

C.S.H.B. 2153 authorizes a purchaser to apply annually for a refund of any amount by which the amount of tax computed using the single local use tax rate and paid by the purchaser exceeds the amount the purchaser would have paid if that tax had been computed using the combined rate of all applicable local use taxes. The bill authorizes the comptroller to adopt rules regarding the procedure and proof required for the refund.

C.S.H.B. 2153 establishes that a person storing, using, or consuming in Texas a taxable item purchased from a remote seller is not liable for any additional amount of local use tax if the remote seller elects to use the single local use tax rate and the person pays to the remote seller the amount of local use tax computed on the purchase using the single local use tax rate. The bill requires the comptroller to take the following actions:

- administer, collect, and enforce local use taxes computed using the single local use tax rate; and
- apportion and distribute such tax revenue in the manner provided by the bill.

C.S.H.B. 2153 authorizes the comptroller to adopt rules to administer the single local tax rate for remote sellers. The bill repeals provisions, whose effects were contingent on certain federal legislation, relating to the imposition of a fee in lieu of local sales and use taxes for a nonresident of Texas who is required under federal law to collect sales or use tax and relating to the requirement for such nonresidents to collect the sales and use tax with respect to the sale of tangible personal property to the extent authorized by federal law.

C.S.H.B. 2153 amends the Government Code to revise provisions relating to the duties of the comptroller to conform to the repeal of the fee imposed in lieu of local sales and use taxes and to the creation of the single local use tax. The bill revises the entities eligible as a local taxing unit for purposes of these provisions to include any taxing unit that has adopted a sales and use tax authorized or governed by Tax Code provisions relating to local taxation. The bill sets out requirements for the comptroller:

- in making refunds for overpayments of taxes computed using the single local use tax rate and refunds to certain purchasers on annual application as provided by the bill;
- in computing the percentage of the total local sales and use tax allocations made to each eligible taxing unit; and
- in determining each eligible taxing unit's share of the deposited revenue.

C.S.H.B. 2153 authorizes the comptroller to adopt rules to administer those revised Government Code provisions. The bill expressly does not require a remote seller to collect local use taxes on sales of taxable items made before October 1, 2019. The bill sets the single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, at 1.75 percent. The bill sets out the purpose of its provisions.

C.S.H.B. 2153 repeals Sections 151.059 and 151.107(c), Tax Code, as added by Chapter 291 (H.B. 2215), Acts of the 71st Legislature, Regular Session, 1989.

EFFECTIVE DATE

October 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2153 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the requirement for the comptroller of public accounts to adopt all necessary rules to implement the bill's provisions by a deadline of not later than October 1, 2019.

The substitute includes the setting of a single local use tax rate to be used for the period beginning October 1, 2019, and ending December 31, 2019.

The substitute changes the bill's effective date from September 1, 2019, to October 1, 2019.