By:  Burrows (Senate Sponsor - Nelson) H.B. No. 2153

(In the Senate - Received from the House April 11, 2019; April 15, 2019, read first time and referred to Committee on Finance; April 25, 2019, reported favorably by the following vote: Yeas 14, Nays 0; April 25, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Nelson               X

Hinojosa             X

Bettencourt          X

Birdwell                       X

Campbell             X

Flores               X

Hancock              X

Huffman              X

Kolkhorst            X

Nichols              X

Perry                X

Taylor               X

Watson               X

West                 X

Whitmire             X

A BILL TO BE ENTITLED

AN ACT

relating to 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.

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

SECTION 1.  The purpose of this Act is to provide an optional, simplified means of computing the amount of local use tax remote sellers are required to collect following the decision of the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

SECTION 2.  Subchapter C, Chapter 151, Tax Code, is amended by adding Section 151.0595 to read as follows:

Sec. 151.0595.  SINGLE LOCAL TAX RATE FOR REMOTE SELLERS. (a) In this section, "remote seller" means a seller whose only activities in this state are described by Section 151.107(a)(4) or (5).

(b)  A remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item made by the remote seller shall compute the amount to collect and remit using:

(1)  the combined rate of all applicable local use taxes authorized or governed by Title 3; or

(2)  at the remote seller's election, the single local use tax rate published in the Texas Register as required by Subsection (d).

(c)  A remote seller who elects under Subsection (b)(2) to use the single local use tax rate shall notify the comptroller of the election before using that rate. The election applies to all sales of taxable items made by the remote seller unless the remote seller revokes the election by notifying the comptroller. Notice to the comptroller under this subsection must be in the form and manner provided by the comptroller.

(d)  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 this state during the preceding state fiscal year, as determined under Subsection (e). Before the beginning of a calendar year, the comptroller shall publish in the Texas Register notice of the single local use tax rate that will be in effect for that calendar year.

(e)  As soon as practicable after the end of a state fiscal year, the comptroller shall determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(1)  dividing the total amount of net local sales and use taxes remitted to the comptroller under this section and Title 3 during that state fiscal year by the total amount of net state sales and use taxes remitted to the comptroller under this chapter during that state fiscal year;

(2)  multiplying the amount computed under Subdivision (1) by the rate provided by Section 151.051; and

(3)  rounding the amount computed under Subdivision (2) to the nearest .0025.

(f)  Notwithstanding Section 111.104(b), a purchaser may annually apply for a refund of any amount by which the amount of use tax computed using the rate described by Subsection (b)(2) and paid by the purchaser exceeds the amount the purchaser would have paid if that tax had been computed using the rate described by Subsection (b)(1). The comptroller may adopt rules regarding the procedure and proof required for the refund.

(g)  A person storing, using, or consuming in this state a taxable item purchased from a remote seller is not liable for any additional amount of local use tax authorized or governed by Title 3 if the remote seller elects under Subsection (b)(2) 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.

(h)  The comptroller shall administer, collect, and enforce local use taxes computed using the single local use tax rate.

(i)  The comptroller shall apportion and distribute revenue from local use taxes computed using the single local use tax rate as provided by Section 403.107, Government Code.

(j)  The comptroller may adopt rules to administer this section.

SECTION 3.  Section 403.107, Government Code, is reenacted and amended to read as follows:

Sec. 403.107.  SINGLE LOCAL USE TAXES COLLECTED BY REMOTE SELLERS [~~SALES AND USE TAX FEES~~]. (a) The comptroller shall deposit revenue remitted to the comptroller from taxes computed using the single local use tax rate under Section 151.0595(b)(2) [~~fees imposed under Section 151.059~~], Tax Code, in the state treasury and shall keep records of the amount of money deposited [~~collected~~] for each reporting period. Money deposited under this subsection [~~Such fees~~] shall be held in trust for the benefit of eligible taxing units, as determined under Subsection (b) [~~in the suspense account of each eligible taxing unit~~]. The comptroller shall distribute money held in trust [~~in the suspense accounts~~] under this section to each eligible taxing unit in the amount and manner provided by [~~federal law or~~] this section.

(b)  A local taxing unit is an eligible taxing unit for purposes of [~~to receive funds under~~] this section if it has adopted a sales and use tax authorized or governed by Title 3, Tax Code [~~under Chapter 321, Chapter 322, or Chapter 323, Tax Code, or has adopted a local sales and use tax governed in part by any provision of those chapters~~].

(c)  Subject to Subsection (d), the [~~The~~] comptroller shall transmit to each eligible taxing unit's treasurer, or to the officer performing the functions of that office, on a monthly [~~quarterly~~] basis, the taxing unit's share of money held in trust under Subsection (a) [~~the fees remitted to the comptroller~~], together with the pro rata share of any penalty or interest on delinquent taxes computed using the single local use tax rate [~~fees~~] that may be collected. Before transmitting the funds, the comptroller shall deduct two percent of [~~the amount allocated to~~] each taxing unit's share [~~unit~~] as a charge by the state for its services under this section and deposit that amount into the state treasury to the credit of the comptroller's operating fund. Interest earned on all deposits made in the state treasury under this section shall be credited to the general revenue fund.

(d)  The comptroller shall retain [~~in the suspense account for a taxing unit~~] a portion of each eligible [~~the~~] taxing unit's share of money held in trust under Subsection (a) [~~the fees collected~~], not to exceed five percent of the amount eligible to be transmitted [~~remitted~~] to the taxing unit under Subsection (c). From the amounts retained [~~in a taxing unit's suspense account~~], the comptroller may make refunds for overpayments of taxes computed using the single local use tax rate, make refunds to purchasers as provided by Section 151.0595(f), Tax Code, and [~~to the account and to~~] redeem dishonored checks and drafts deposited under Subsection (a) [~~to the credit of the account~~].

(e)  The [~~Unless another method is required by federal law, the~~] comptroller shall compute for each calendar month [~~quarter~~] the percentage of the total sales and use tax allocations made pursuant to Title 3, [~~of the~~] Tax Code, including any local sales and use taxes governed by any provision of Title 3, [~~of the~~] Tax Code, to each eligible taxing unit. The comptroller shall determine each eligible taxing unit's share of the money held in trust from deposits under Subsection (a) for that month by applying the percentage computed under this subsection for the eligible taxing unit [~~and shall apply that percentage~~] to the total amount held in trust from deposits for that month [~~fees collected under Section 151.059, Tax Code, and allocated to eligible taxing units in that quarter~~].

(f)  The comptroller may combine an eligible taxing unit's share of the money held in trust under Subsection (a) [~~fees remitted or collected under Section 151.059, Tax Code, a suspense account under this section, or an allocation made under this section~~] with other money [~~trust or suspense accounts~~] held for that taxing unit [~~or other allocations made to that taxing unit under Title 3 of the Tax Code~~].

(g)  The comptroller may adopt rules to administer this section.

SECTION 4.  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, are repealed.

SECTION 5.  The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 6.  (a) This Act does not require a remote seller, as defined by Section 151.0595, Tax Code, as added by this Act, to collect local use taxes on sales of taxable items made before October 1, 2019.

(b)  Notwithstanding Section 151.0595(d), Tax Code, as added by this Act, the single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, is 1.75 percent.

SECTION 7.  This Act takes effect October 1, 2019.

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