

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 8, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB2358 by Guillen (Relating to the administration and collection of sales and use taxes applicable to certain sales.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2358, As Introduced: a positive impact of \$550,000,000 through the biennium ending August 31, 2021.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$242,500,000
2021	\$307,500,000
2022	\$315,200,000
2023	\$323,100,000
2024	\$331,100,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund 1</i>	Probable Revenue Gain from <i>Cities</i>	Probable Revenue Gain from <i>Transit Authorities</i>	Probable Revenue Gain from <i>Counties & Special Districts</i>
2020	\$242,500,000	\$40,000,000	\$14,000,000	\$8,000,000
2021	\$307,500,000	\$57,000,000	\$20,000,000	\$11,000,000
2022	\$315,200,000	\$58,000,000	\$20,000,000	\$12,000,000
2023	\$323,100,000	\$60,000,000	\$21,000,000	\$12,000,000
2024	\$331,100,000	\$61,000,000	\$21,000,000	\$12,000,000

Fiscal Analysis

The bill would amend Chapters 151, 321, and 323, Tax Code in relation to administration and collection of sales and use taxes applicable to sales involving marketplace providers.

The bill would amend Section 151.008(b) to include a marketplace provider as a person within the meaning of "seller" and "retailer," and therefore subject to the provisions of Chapter 151

applicable to sellers and retailers.

The bill would add Section 151.0242 regarding marketplace providers and marketplace sellers.

"Marketplace" would be defined as a physical or electronic medium, including a store, internet website, software application, or catalog, through which persons other than the owner or operator of the medium make sales of taxable items; "marketplace provider" would be defined as a person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers; and "marketplace seller" would be defined as a seller other than the marketplace provider who makes a sale of a taxable item through a marketplace.

A marketplace provider would be required to: 1) provide a collection certificate to each marketplace seller to certify that the marketplace provider assumes the rights and duties of a seller or retailer under Chapter 151 with respect to sales made by the marketplace seller through the marketplace; 2) report under Subchapter I all sales made through the marketplace; and 3) collect and remit the taxes imposed under the chapter on sales of taxable items made through the marketplace.

A marketplace seller would exclude sales made through a marketplace from the seller's report under Subchapter I, retain records for all marketplace sales, and furnish information to a marketplace provider that is required to correctly collect and remit sales and use tax, including certification that an item being sold is a taxable item, not a taxable item, or is exempt from taxation.

A marketplace provider would not be liable for failure to collect and remit the correct amount of tax if good faith reliance on incorrect information provided by a marketplace seller were demonstrated, in which case the marketplace seller would be liable for the deficiency.

The bill would amend Section 151.704 to provide that a retailer commits an offense if the retailer advertises, holds out, or states to a customer or to the public that the tax is not part of the sales price payable by the customer. A retailer would not commit an offense if: 1) the retailer indicates in the advertisement, holding out, or statement that the retailer is paying the tax for the customer; 2) the retailer does not indicate or imply in the advertisement, holding out, or statement that the sale is exempt or excluded from taxation; and 3) any purchaser's receipt or other statement given to the customer listing the sales price paid, or to be paid, by the customer separately state the amount of the tax and indicate that the tax will be paid by the retailer. A retailer would also not commit an offense if the retailer is a utility that bills a customer in one lump-sum price that includes the utility sales price and the tax amount.

The comptroller would have rulemaking authority for implementation of the added section, including authority by rule to except certain small marketplace providers from some or all of the requirements of the section.

The bill would also amend Sections 321.203 and 323.203, regarding municipal and county sales and use taxes, to provide that a sale of a taxable item made by a marketplace seller through a marketplace is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the purchaser.

The bill would take effect October 1, 2019.

Methodology

The estimates are based on industry reports on internet retailing and confidential information provided to the comptroller. The expected increases in tax collections are attributable to greater efficiency of tax administration and convenience and avoidance of undue burdens for taxpayers when responsibility for collection and remittance rests with marketplace providers rather than myriad individual sellers.

Local Government Impact

There would be a corresponding gain of sales and use tax revenue to local taxing jurisdictions. The estimated revenue gains are displayed in the above tables.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD