

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Burrows

H.B. No. 1525

A BILL TO BE ENTITLED

AN ACT

relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.

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

SECTION 1. Section 151.008(b), Tax Code, is amended to read as follows:

(b) "Seller" and "retailer" include:

(1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;

(2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy;

(3) a person regarded by the comptroller as a seller or retailer under Section 151.024;

(4) a hotel, motel, or owner or lessor of an office or residential building or development that contracts and pays for telecommunications services for resale to guests or tenants;

(5) a person who engages in regular or systematic solicitation of sales of taxable items in this state 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 data base, cable, optic, microwave, or other communication system for the purpose of

1 effecting sales of taxable items; ~~and~~

2 (6) a person who, under an agreement with another  
3 person, is:

4 (A) entrusted with possession of tangible  
5 personal property with respect to which the other person has title  
6 or another ownership interest; and

7 (B) authorized to sell, lease, or rent the  
8 property without additional action by the person having title to or  
9 another ownership interest in the property; and

10 (7) a person who is a marketplace provider under  
11 Section 151.0242.

12 SECTION 2. Subchapter B, Chapter 151, Tax Code, is amended  
13 by adding Section 151.0242 to read as follows:

14 Sec. 151.0242. MARKETPLACE PROVIDERS AND MARKETPLACE  
15 SELLERS. (a) In this section:

16 (1) "Marketplace" means a physical or electronic  
17 medium through which persons other than the owner or operator of the  
18 medium make sales of taxable items. The term includes a store,  
19 Internet website, software application, or catalog.

20 (2) "Marketplace provider" means a person who owns or  
21 operates a marketplace and directly or indirectly processes sales  
22 or payments for marketplace sellers.

23 (3) "Marketplace seller" means a seller, other than  
24 the marketplace provider, who makes a sale of a taxable item through  
25 a marketplace.

26 (b) Except as otherwise provided by this section, a  
27 marketplace provider has the rights and duties of a seller or

1 retailer under this chapter with respect to sales made through the  
2 marketplace.

3 (c) A marketplace provider shall:

4 (1) certify to each marketplace seller that the  
5 marketplace provider assumes the rights and duties of a seller or  
6 retailer under this chapter with respect to sales made by the  
7 marketplace seller through the marketplace;

8 (2) collect in the manner provided by Subchapters C  
9 and D the taxes imposed by this chapter on sales of taxable items  
10 made through the marketplace; and

11 (3) report and remit under Subchapter I the taxes  
12 imposed by this chapter on all sales made through the marketplace.

13 (d) A marketplace seller who in good faith accepts a  
14 marketplace provider's certification under Subsection (c)(1) shall  
15 exclude sales made through the marketplace from the marketplace  
16 seller's report under Subchapter I, notwithstanding Section  
17 151.406.

18 (e) A marketplace seller shall retain records for all  
19 marketplace sales as required by Section 151.025.

20 (f) A marketplace seller shall furnish to the marketplace  
21 provider information that is required to correctly collect and  
22 remit taxes imposed by this chapter. The information may include a  
23 certification of taxability that an item being sold is a taxable  
24 item, is not a taxable item, or is exempt from taxation.

25 (g) Except as provided by Subsection (h), a marketplace  
26 provider is not liable for failure to collect and remit the correct  
27 amount of taxes imposed by this chapter if the marketplace provider

1 demonstrates that the failure resulted from the marketplace  
2 provider's good faith reliance on incorrect or insufficient  
3 information provided by the marketplace seller. The marketplace  
4 seller is liable for a deficiency resulting from incorrect or  
5 insufficient information provided by the marketplace seller.

6 (h) A marketplace provider and marketplace seller that are  
7 affiliates or associates, as defined by Section 1.002, Business  
8 Organizations Code, are jointly and severally liable for a  
9 deficiency resulting from a sale made by the marketplace seller  
10 through the marketplace.

11 (i) This section does not affect the tax liability of a  
12 purchaser under Section 151.052 or 151.102.

13 (j) A court may not certify an action brought against a  
14 marketplace provider concerning this section as a class action.

15 (k) The comptroller may adopt rules and forms to implement  
16 this section and by rule except certain small marketplace providers  
17 from some or all of the requirements of this section.

18 SECTION 3. Section 321.203, Tax Code, is amended by adding  
19 Subsection (e-1) to read as follows:

20 (e-1) Notwithstanding any other provision of this section,  
21 a sale of a taxable item made by a marketplace seller through a  
22 marketplace as provided by Section 151.0242 is consummated at the  
23 location in this state to which the item is shipped or delivered or  
24 at which possession is taken by the purchaser.

25 SECTION 4. Section 323.203, Tax Code, is amended by adding  
26 Subsection (e-1) to read as follows:

27 (e-1) Notwithstanding any other provision of this section,

1 a sale of a taxable item made by a marketplace seller through a  
2 marketplace as provided by Section 151.0242 is consummated at the  
3 location in this state to which the item is shipped or delivered or  
4 at which possession is taken by the purchaser.

5 SECTION 5. (a) The comptroller of public accounts, in  
6 coordination with affected industry leaders, shall study the  
7 estimated fiscal and other impacts to this state of providing an  
8 exception under Section 151.0242(k), Tax Code, as added by this  
9 Act, for marketplace providers with each of the following maximum  
10 amounts of annual gross revenue from the sale of taxable items for  
11 storage, use, or other consumption in this state:

- 12 (1) \$500,000;  
13 (2) \$200,000;  
14 (3) \$100,000; and  
15 (4) \$50,000.

16 (b) Not later than December 1, 2020, the comptroller shall  
17 prepare a report with the findings of the study and make the report  
18 available in an electronic format to the public and each member of  
19 the legislature.

20 SECTION 6. The changes in law made by this Act do not affect  
21 tax liability accruing before the effective date of this Act. That  
22 liability continues in effect as if this Act had not been enacted,  
23 and the former law is continued in effect for the collection of  
24 taxes due and for civil and criminal enforcement of the liability  
25 for those taxes.

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

ADOPTED

MAY 03 2019

*Leroy Spauld*  
Secretary of the Senate

By: Nelson

H.B. No. 1525

Substitute the following for \_\_.B. No. \_\_\_\_:

By: James Nelson

C.S. H.B. No. 1525

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3 taxes applicable to sales involving marketplace providers.

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

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10 (2) a person who makes more than two sales of taxable  
11 items during a 12-month period, including sales made in the  
12 capacity of an assignee for the benefit of creditors or receiver or  
13 trustee in bankruptcy;

14 (3) a person regarded by the comptroller as a seller or  
15 retailer under Section 151.024;

16 (4) a hotel, motel, or owner or lessor of an office or  
17 residential building or development that contracts and pays for  
18 telecommunications services for resale to guests or tenants;

19 (5) a person who engages in regular or systematic  
20 solicitation of sales of taxable items in this state by the  
21 distribution of catalogs, periodicals, advertising flyers, or  
22 other advertising, by means of print, radio, or television media,  
23 or by mail, telegraphy, telephone, computer data base, cable,  
24 optic, microwave, or other communication system for the purpose of

1 effecting sales of taxable items; ~~and~~

2 (6) a person who, under an agreement with another  
3 person, is:

4 (A) entrusted with possession of tangible  
5 personal property with respect to which the other person has title  
6 or another ownership interest; and

7 (B) authorized to sell, lease, or rent the  
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19 Internet website, software application, or catalog.

20 (2) "Marketplace provider" means a person who owns or  
21 operates a marketplace and directly or indirectly processes sales  
22 or payments for marketplace sellers.

23 (3) "Marketplace seller" means a seller, other than  
24 the marketplace provider, who makes a sale of a taxable item through  
25 a marketplace.

26 (b) Except as otherwise provided by this section, a  
27 marketplace provider has the rights and duties of a seller or

1 retailer under this chapter with respect to sales made through the  
2 marketplace.

3 (c) A marketplace provider shall:

4 (1) certify to each marketplace seller that the  
5 marketplace provider assumes the rights and duties of a seller or  
6 retailer under this chapter with respect to sales made by the  
7 marketplace seller through the marketplace;

8 (2) collect in the manner provided by Subchapters C  
9 and D the taxes imposed by this chapter on sales of taxable items  
10 made through the marketplace; and

11 (3) report and remit under Subchapter I the taxes  
12 imposed by this chapter on all sales made through the marketplace.

13 (d) A marketplace seller who in good faith accepts a  
14 marketplace provider's certification under Subsection (c)(1) shall  
15 exclude sales made through the marketplace from the marketplace  
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17 151.406.

18 (e) A marketplace seller shall retain records for all  
19 marketplace sales as required by Section 151.025.

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5 insufficient information provided by the marketplace seller.

6 (h) A marketplace provider and marketplace seller that are  
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8 Organizations Code, are jointly and severally liable for a  
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12 purchaser under Section 151.052 or 151.102.

13 (j) A court may not certify an action brought against a  
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15 (k) The comptroller may adopt rules and forms to implement  
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17 some or all of the requirements of this section.

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19 Subsection (e-1) to read as follows:

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22 marketplace as provided by Section 151.0242 is consummated at the  
23 location in this state to which the item is shipped or delivered or  
24 at which possession is taken by the purchaser.

25 SECTION 4. Section 323.203, Tax Code, is amended by adding  
26 Subsection (e-1) to read as follows:

27 (e-1) Notwithstanding any other provision of this section,

1 a sale of a taxable item made by a marketplace seller through a  
2 marketplace as provided by Section 151.0242 is consummated at the  
3 location in this state to which the item is shipped or delivered or  
4 at which possession is taken by the purchaser.

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

11         SECTION 6. This Act takes effect October 1, 2019.

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 3, 2019

**TO:** Honorable Dennis Bonnen, Speaker of the House, House of Representatives

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

**IN RE: HB1525** by Burrows (Relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.), **As Passed 2nd House**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1525, As Passed 2nd House: 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 General Revenue Fund 1	Probable Revenue Gain from Cities	Probable Revenue Gain from Transit Authorities	Probable Revenue Gain from Counties & Special Districts
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. "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) certify to each marketplace seller 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) collect the taxes imposed under the chapter on sales of taxable items made through the marketplace; and 3) report and remit under Subchapter I the taxes imposed on all sales 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 comptroller would have rulemaking authority for implementation of the added section, including authority by rule to except certain 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

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 25, 2019

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

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

IN RE: **HB1525** by Burrows (relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1525, Committee Report 2nd House, Substituted: 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
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All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from General Revenue Fund 1	Probable Revenue Gain from Cities	Probable Revenue Gain from Transit Authorities	Probable Revenue Gain from Counties & Special Districts
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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. "Marketplace seller" would be defined as a seller other than the marketplace provider who makes a sale of a taxable item through a marketplace.

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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 comptroller would have rulemaking authority for implementation of the added section, including authority by rule to except certain 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.

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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.

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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

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 16, 2019

TO: Honorable Jane Nelson, Chair, Senate Committee on Finance

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

IN RE: **HB1525** by Burrows (Relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1525, As Engrossed: a positive impact of \$550,000,000 through the biennium ending August 31, 2021.

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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 Comptroller would be required to submit by December 1, 2020 a report to the Legislature and the public regarding the fiscal and other implications to the state of providing an exception of certain small marketplace providers from some or all of the section's requirements. The report would cover marketplace providers with \$500,000; \$200,000; \$100,000; and \$50,000 of maximum annual gross revenue from the sale of taxable items for use, storage, or consumption in the state.

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.

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**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** WP, KK, SD

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 25, 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: HB1525 by Burrows (relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.), Committee Report 1st House, Substituted

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1525, Committee Report 1st House, Substituted: a positive impact of \$550,000,000 through the biennium ending August 31, 2021.

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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.

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A marketplace provider would be required to: 1) certify to each marketplace seller 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) collect the taxes imposed under the chapter on sales of taxable items made through the marketplace; and 3) report and remit under Subchapter I the taxes imposed on all sales 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 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

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 12, 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: HB1525 by Burrows (Relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.), As Introduced

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1525, 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 General Revenue Fund 1	Probable Revenue Gain from Cities	Probable Revenue Gain from Transit Authorities	Probable Revenue Gain from Counties & Special Districts
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) certify to each marketplace seller 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 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 September 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.

The estimates for 2020 assume an implementation date of October 1, 2019 for purposes of efficient coordination with changes in seller responsibilities, as adopted by rule with October 1, 2019 effect, following the decision of the United States Supreme Court in *South Dakota v. Wayfair, Inc.*

### **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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**TAX/FEE EQUITY NOTE**

**86TH LEGISLATIVE REGULAR SESSION**

**March 22, 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: HB1525** by Burrows (relating to the administration and collection of sales and use taxes applicable to sales involving marketplace providers.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

**Source Agencies:**

**LBB Staff:** WP, KK