

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

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 2, 2021**

**TO:** Honorable Morgan Meyer, Chair, House Committee on Ways & Means

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1696** by Raney (Relating to the comptroller's authority to except remote sellers and marketplace providers from sales and use tax requirements based on revenue, sales, or transactions.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1696, As Introduced : a positive impact of \$34,400,000 through the biennium ending August 31, 2023.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	\$13,700,000
2023	\$20,700,000
2024	\$21,500,000
2025	\$22,400,000
2026	\$23,300,000

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Revenue Gain from General Revenue Fund 1</b>	<b>Probable Revenue Gain from Cities</b>	<b>Probable Revenue Gain from Transit Authorities</b>	<b>Probable Revenue Gain from Counties &amp; Special Districts</b>
2022	\$13,700,000	\$2,510,000	\$840,000	\$550,000
2023	\$20,700,000	\$3,800,000	\$1,280,000	\$830,000
2024	\$21,500,000	\$3,950,000	\$1,320,000	\$860,000
2025	\$22,400,000	\$4,110,000	\$1,380,000	\$900,000
2026	\$23,300,000	\$4,280,000	\$1,440,000	\$930,000

**Fiscal Analysis**

The bill would amend Chapter 151, Tax Code (Limited Sales and Use Tax) to limit the comptroller's authority to except certain marketplace providers and remote sellers from the requirements of the chapter based on revenue, sales, or transactions.

The bill would amend Section 151.0242 to provide that a marketplace provider may not be excepted from sales and use tax collection responsibility based on (1) revenue or sales greater than \$100,000 in a 12-month period, or (2) transactions in a number greater than 200 in a 12-month period.

The bill would amend Section 151.0595 to provide that a remote seller may not be excepted from a requirement of the chapter based on (1) revenue or sales greater than \$100,000 in a 12-month period, or (2)

transactions in a number greater than 200 in a 12-month period.

The comptroller would be required to adopt rules in compliance with the bill not later than January 1, 2022.

The bill would take effect September 1, 2021.

### **Methodology**

Currently, a safe harbor from Texas sales and use tax permitting and collection obligations is provided by rule for remote sellers with less than \$500,000 in annual gross revenue from sales of tangible personal property and services for storage, use, or other consumption in this state (34 Tex. Admin. Code ?3.286). The rule does not provide safe harbor for a remote seller based on a minimum number of transactions.

The rule does not provide safe harbor for a marketplace provider based on a minimum amount of revenue or minimum number of transactions, but does provide for a marketplace provider to request a waiver from sales tax collection requirements based on the marketplace provider's industry's business models and practices or other factors.

The bill does not define “revenue or sales” for purposes of the \$100,000 threshold above which an exception from sales tax collection obligations based on revenue or sales could not be provided. This estimate assumes that revenue or sales would mean Texas revenue as currently provided by rule.

The Comptroller's estimate of fiscal impact is based on U.S. Census Bureau data for retailer revenue by revenue size class apportioned to Texas based on personal income and remote seller tax collections data since the effective date for the rule requiring remote seller tax collections after the U.S. Supreme Court decision in *South Dakota v. Wayfair*.

### **Local Government Impact**

There would be a corresponding gain of sales and use tax revenue to units of local government.

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

**LBB Staff:** JMc, KK, SD