

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

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

**April 18, 2021**

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

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

**IN RE: HB4357** by Schaefer (Relating to the application of sales and use taxes to information technology consulting and technical support services.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB4357, As Introduced : a negative impact of (\$364,100,000) 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	(\$161,100,000)
2023	(\$203,000,000)
2024	(\$213,200,000)
2025	(\$223,900,000)
2026	(\$235,100,000)

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

<i>Fiscal Year</i>	<b>Probable Revenue (Loss) from General Revenue Fund 1</b>	<b>Probable Revenue (Loss) from Cities</b>	<b>Probable Revenue (Loss) from Transit Authorities</b>	<b>Probable Revenue (Loss) from Counties &amp; Special Districts</b>
2022	(\$161,100,000)	(\$29,570,000)	(\$9,930,000)	(\$6,440,000)
2023	(\$203,000,000)	(\$37,260,000)	(\$12,510,000)	(\$8,110,000)
2024	(\$213,200,000)	(\$39,140,000)	(\$13,140,000)	(\$8,520,000)
2025	(\$223,900,000)	(\$41,100,000)	(\$13,790,000)	(\$8,950,000)
2026	(\$235,100,000)	(\$43,160,000)	(\$14,480,000)	(\$9,390,000)

**Fiscal Analysis**

The bill would amend Chapter 151, Tax Code to revise the sales and use taxation of certain computer-related services.

The bill would add Section 151.00385 to define “information technology consulting and technical support services,” and amend Section 151.0101(a) to include such services in the definition of taxable services.

The bill would define “Information technology consulting and technical support services” as services involving the application of information technology knowledge, including hardware or software architecture, software support, remote help desk services, technology-related training, and computer diagnostics and repair, provided they are (1) sold as part of a subscription service, or (2) provided in association with the sale of a taxable item.

The bill would amend Section 151.0101(a)(5)(D) to exclude from the definition of taxable services the repair, remodeling, maintenance, and restoration of a computer program if the service is not sold as part of a subscription or in association with the sale of a taxable item.

The bill would take effect October 1, 2021.

### **Methodology**

Apart from explicit provision for the sale of a service in the contract for sale of a taxable item, the phrase “in association with the sale of a taxable item” within added Section 151.00385(a)(2) cannot be given practical effect for tax administration. Consequently, absent such contractual provision, taxability of any service within the meaning of information technology consulting and technical support services would depend on whether performance of the service were on a subscription basis. Any such service not sold as part of a subscription would not fall within the definition.

The phrase “application of information technology knowledge” is not defined or of plain meaning, and because the word “including” is a term of expansion and not of limitation, the items listed thereafter are not a definitive indication of what services may be construed as information technology consulting and technical support services. Consequently, the scope of currently taxable services that would be exempted by the bill, when not sold on a subscription basis, may be extensive.

Under current law, the repair, remodeling, maintenance, and restoration of a computer program is a taxable service if the computer program is one sold by the person performing the service, regardless of the terms of sale of the service. The bill would reduce the scope of such services subject to tax to those sold on a subscription basis, or sold in association with another sale of a taxable item. Currently-taxable services performed by the seller of a computer program subsequent to the sale of the program would be exempted by the bill provided the services were not sold on a subscription basis or not sold in a way that could be deemed in association with the sale of a taxable item.

The Comptroller's fiscal analysis assumes that the repair, remodeling, maintenance, and restoration of a computer program when performed by the seller of the program subsequent to the sale of the program would be exempt from tax unless performed on a subscription basis, and that sales of such services on a subscription basis would decline for that reason. While some services currently exempt as contract computer programming might fall within the definition of information technology consulting and technical support services, such services would be taxable only if sold on a subscription basis. The Comptroller's fiscal analysis assumes contracts for computer programming would be structured to remain exempt from tax.

The estimate is based on comptroller tax file data for sales tax remittances from computer hardware and software and other technology companies, with a significant portion of their taxable service revenue assumed to migrate to a non-subscription basis after the effective date of the bill.

### **Local Government Impact**

There would be a proportional reduction of sales and use tax revenue from units of local government displayed in the above tables.

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

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