

BILL ANALYSIS

C.S.H.B. 5089
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Local sales tax administration can be confusing and unclear for retailers and taxpayers since certain sales are sourced to the location where the item is shipped or delivered or where the purchaser takes possession, while others sales are sourced to the seller's place of business. C.S.H.B. 5089 seeks to simplify and clarify local sales and use tax administration, including implementing destination sourcing for certain sales.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 5089 amends the Tax Code to revise provisions governing the sourcing of sales for purposes of local sales and use tax.

Municipal Sales and Use Tax

Origin-Based Sourcing

Small Business Retailers

C.S.H.B. 5089 replaces the provision establishing that all taxable retail sales of a retailer with only one place of business in Texas are considered consummated at that place of business with a provision establishing instead that the sale of a taxable item by a small business is consummated at the business's "principal business location," which the bill defines as the business location where the business's decision makers conduct the daily affairs of the organization. The bill defines "small business" as a sales tax permit holder that has its principal business location in Texas and that has:

- not more than 20 employees, including all employees of each member of an affiliated group that includes the permit holder; and
- total combined gross receipts from the sale of tangible personal property and services in the preceding twelve calendar months of less than \$500,000, including the gross receipts of each member of an affiliated group that includes the permit holder.

The bill defines "affiliated group" by reference as a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

In-Person Sales by Other Retailers

C.S.H.B. 5089 revises provisions relating to sales tax imposed on a retailer with more than one place of business to establish that each sale of each taxable item by a retailer other than a small business is consummated at the place of business of the retailer in Texas where the retailer receives the order, provided that the order is placed in person by the purchaser or lessee of the taxable item at the place of business of the retailer in Texas where the retailer receives the order. The bill excludes from the definition of "place of business of the retailer" for purposes of the municipal sales and use tax a computer server, Internet protocol address, domain name, website, or software application.

Destination-Based Sourcing

C.S.H.B. 5089 establishes a destination-based sourcing model for any taxable sale to which the aforementioned sourcing models do not apply and in which the purchaser receives shipment or delivery of, or otherwise takes possession of, the item in Texas by establishing that such a sale is considered consummated at the location in Texas to which the item is shipped or delivered or at which possession is taken by the purchaser.

Location of Receipt

C.S.H.B. 5089 establishes that an order is considered to be received at the location where all of the information from the purchaser necessary to determine whether the order can be accepted has been received by or on behalf of the seller. The order is expressly not considered to be received at a location where the order is subsequently accepted, completed, or fulfilled.

Transition for Certain Retailers

C.S.H.B. 5089 includes temporary provisions set to expire December 31, 2028, providing for a transition to the revised sourcing models for retailers that have active economic development agreements with municipalities. A retailer that has an active economic development agreement with a municipality and has a single place of business in Texas that is within the municipality may elect to collect and report municipal sales taxes based on the location of the retailer's single place of business. A retailer that has an active economic development agreement with a municipality may elect to collect and report municipal sales tax based on the location of the retailer within the municipality from which an item is shipped directly to the purchaser or the purchaser's designee. The bill establishes that such elections are binding on the retailer and the purchaser. The bill defines "active economic development agreement" as a Chapter 380 or 381 economic development agreement, or an investment agreement with a Type A or Type B economic development corporation, under which the local government made payments on or before January 1, 2023, based on local sales and use tax collections.

County and Municipal Sales and Use Tax

C.S.H.B. 5089 removes and repeals provisions governing the consummation of sales for purposes of the county sales and use tax and makes the provisions governing the consummation of sales for purposes of the municipal sales and use tax applicable also with respect to the county sales and use tax, including provisions establishing certain applicable definitions. The bill repeals a provision that makes a repealed municipal sales tax provision inapplicable to the Dickinson Management District No. 1.

Applicability on Tax Liability

C.S.H.B. 5089 expressly does not affect tax liability accruing before the bill's effective date.

Repealed Law

C.S.H.B. 5089 repeals the following provisions:

- Section 3853.202(d), Special District Local Laws Code; and
- Sections 323.203(b), (c), (c-1), (c-4), (c-5), (d), (e), (e-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (m), Tax Code.

EFFECTIVE DATE

January 1, 2024.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5089 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the introduced and the substitute relate to the location at which certain sales are consummated for purposes of local sales and use taxes, a different approach is taken in each version of the bill. Whereas the introduced established a destination-based sourcing method as the default method for all taxable sales for purposes of local sales and use taxes, the substitute establishes a destination-based sourcing model only for certain taxable sales that are not conducted by a small business or in person by another retailer. Additionally, the substitute includes provisions absent from the introduced establishing a temporary period, expiring December 31, 2028, for retailers with active economic development agreements with municipalities to transition to the revised sourcing models. No other provision contained in the substitute with respect to the sourcing of sales appeared in the introduced with the exception of certain of the repealed laws, which differ as they conform to the substantive revisions made by the various versions of the bill in which they appeared. Specifically, the introduced repealed the following provisions:

- Section 3853.202(d), Special District Local Laws Code;
- Sections 321.203(c), (c-1), (c-4), (c-5), (d), (e), (e-1), and (m), Tax Code; and
- Sections 323.203(c), (c-1), (c-4), (c-5), (d), (e), and (e-1), Tax Code.

The substitute instead repeals the following provisions:

- Section 3853.202(d), Special District Local Laws Code; and
- Sections 323.203(b), (c), (c-1), (c-4), (c-5), (d), (e), (e-1), (f), (g), (g-1), (g-2), (g-3), (h), (i), (j), (k), and (m), Tax Code.

The substitute includes provisions absent from the introduced that do the following:

- exclude from the definition of "place of business of the retailer" a computer server, Internet protocol address, domain name, website, or software application; and
- define "active economic development agreement," "affiliated group," "principal business location," and "small business."