Legislative Issues
TCCE Policy Center

TEXAS CHAMBER of COMMERCE EXECUTIVES

HB 4072
Distribution of Local Sales and Use Tax

Background

For decades, the local portion of the Texas sales tax has been collected by businesses, sent to the Comptroller, and returned to the cities and counties in which the sales take place. Budgets for cities and counties around the state reflect projected revenue based on that. Businesses, large or small, have their accounting processes arranged that way.

What's at Issue

Comptroller Glenn Hegar has identified a loophole which he says may be working unfairly against many communities and favorably to a few others. Current law provides that all sales by retailers with only one location in the state are sourced to that retailer's location, irrespective of whether the retailer is hipping orders to other cities and counties. The Comptroller has noted, this rule is susceptible to being abused through certain economic development agreements ("380 agreements") cities or counties entered with private businesses.

Here are how these agreements may work: a company may declare a single facility, like a "customer service center," and state that facility receives internet orders, even though the internet orders are handled and shipped from a separate fulfillment center that may not even be in Texas. Under this arrangement, all the local online sales tax revenue from across the state ends up in the community with the "customer service center," regardless of where the item is delivered or picked up in Texas. On top of that, the city with the "customer service center," as part of the economic development agreement, may give most of the money back to the business.

Status

Texas House Ways and Means Committee Chair Morgan Meyer (R-Dallas) has filed H.B. 4072, relating to the location at which certain sales are consummated for purposes of local sales and use taxes. Its companion bill is S.B. 1332 by State Senator Juan "Chuy" Hinojosa (D-McAllen). The bill would change the distribution of local sales and use tax allocated to local taxing jurisdictions.

Under this bill, the sales tax would go to the destination local taxing entity – to where the item is shipped, delivered, or taken within the state. HB 4072 would ensure that local sales tax on shipped orders stays in the area where the buyer lives.

The House Ways and Means Committee conducted a hearing on April 6, 2021 and voted 10-0 to report favorably a committee substitute. At the time of this writing on April 20, 2021, that remains the status.

Arguments for HB 4072:

- Makes sales and use tax distribution more equitable: Puts all governmental entities on a level playing field.
- Removes unfair advantages: of agreements for sale for resale customer service centers. Chapter 380 Local Government Code.
- Eliminates deterrent to business expansion: The “only one location” rule is poor public policy; if anything, it gives a company a reason not to expand its operations in Texas.
- Consumers may not understand 380 agreements: Taxpayers who though they were supporting local needs are actually subsidizing a business that may only have a minor footprint somewhere far from local schools and roads and parks.
- Makes Texas system comparable to other majority of other states. Nationally, only 11 states, including Texas, still use origin sourcing for intrastate sales. Of the remaining states, 35 states use destination sourcing, and four states have no sales tax.
- Software eases process: Advances in software technology makes it easy to calculate tax rates for destinations. Many major point-of-sale and online sales platform applications include tax calculation features.

Arguments against HB 4072:

- Lack of interim study: When such significant changes to policy are being considered, an extensive study of the current situation, and its possible solutions usually takes place. No such interim study took place on this issue.
- Insignificant problem: Less than 1 percent of the 1,600-plus taxing authorities in the state have “sale for resale” 380 agreements.
- Comptroller has power to solve: If the “sale for resale” agreements are significant problems the Comptroller may use Chapter 321.203(m) to invalidate them.
- Places unfair burden on businesses: Sellers, big and small, will have to determine the taxing jurisdiction to which the sold item is being shipped, delivered, or taken. Then they will determine the applicable tax rate in that locale. Then the tax payment will be remitted.
- Commercial software addendums: Accounting (point of sale) software for small businesses likely can have some functionality to relieve a portion of the cumbersome. Cost of such system may be a hinderance for small businesses.
- Nullifies existing 380 agreements: The legislation would put the state in the position of effectively eliminating the existing 380 agreements between businesses and cities.