

SUBJECT: Prohibiting retailer place of business for municipal sales tax avoidance

COMMITTEE: Local Government Ways and Means — committee substitute recommended

VOTE: 5 ayes — Hill, Hegar, Laubenberg, Puente, Quintanilla
0 nays
2 absent — McReynolds, Mowery

WITNESSES: For — Mayor David E. Dorman, City of Melissa
Against — None

BACKGROUND: The 70th Legislature in 1987 enacted the Municipal Sales and Use Tax Act, found in the Tax Code, ch. 321. In sec. 321.002(3), the definition of “place of business of the retailer” for purposes for determining tax collection is an established outlet, office, or location operated by the retailer or the retailer’s agent or employee for the purpose of receiving orders for taxable items. It includes any location at which three or more orders are received by the retailer during a calendar year.

DIGEST: CSHB 3534 would amend Tax Code 321.002(3) to exclude from the definition of “place of business of the retailer” for purposes of municipal sales and use tax collection an outlet, office, facility, or location that contracted with a retail or commercial business to process for that business invoices or bills of lading to which the tax applied if the comptroller determined that it existed to avoid the tax or to rebate a portion of the tax to the contracting business.

The bill also would add subsection (l) to Tax Code, sec. 321.203, providing that if there was no place of business of the retailer because the comptroller determined that an outlet, office, facility, or location contracted with a retail or commercial business to process for that business invoices or bills of lading to avoid municipal sales and use tax or to rebate a portion of that tax to a contracting business, a sale would be consummated at the place of business of

the retailer from whom the outlet, office, facility, or location purchased the taxable item for resale to the contracting business.

The bill would take effect September 1, 2003, and would apply only to a sale of a taxable item that occurred on or after that date.

**SUPPORTERS
SAY:**

CSHB 3532 would halt the practice of allowing an outlet, office, facility, or location that might be different from the point of sale or of merchandise delivery or shipping to be the point of collection in order to avoid a higher municipal sales tax than at the actual point of sale. Some Texas cities have been promoting the establishment of what functions as a “sales tax billing office.” Corporations contract with the billing office and send billing instructions to “re-invoice” items. The billing office, then, becomes the “new” point of sale.

A city that establishes a sales tax billing office can amass vast sales on paper with almost no investment, infrastructure, tax base, or employment simply by brokering a shift in the point of sales tax accounting. In return, that city or their economic development corporation can rebate a portion, typically 65 to 75 percent, of the economic development sales tax back to the contracting corporation. Meanwhile, another city, often nearby, where the retail corporation is located loses a sizeable portion of the sales tax it properly earned.

CSHB 3534 would stop this practice without affecting legitimate rebates, such as a city agreeing to return a portion of the economic development sales tax to reimburse a developer for infrastructure or a true investment that inserts value into the tax base.

**OPPONENTS
SAY:**

This practice of channeling purchases is not new. It has been a custom in the Northeast for years, although it is relatively new to Texas. It is a legal and acceptable practice that benefits the corporation by paying reduced local sales tax, and benefits the local government by receiving a portion of the sales tax that it might not otherwise.

NOTES:

The committee substitute differs from the bill as introduced by adding subsection (l) to the Tax Code, sec. 321.203. Also, CSHB 3534 would require the comptroller to determine that an outlet, office, facility, or location

functioned or existed to avoid a municipal sales and use tax or to rebate a portion of the tax to the contracting business.