

BILL ANALYSIS

Senate Research Center
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S.B. 393
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, there is no statute of limitations on the reallocation of sales tax revenue by the comptroller of public accounts (comptroller), nor is there a process for appealing the reallocation of sales tax dollars from one governmental entity to another. This places an undue burden on cities that face the possibility of having to pay back sales tax that may have been rightfully allocated to them and which they may have already spent. Some cities want a limit on how many years the comptroller can go back to reallocate sales tax revenue and an appeals process to dispute possible reallocation action by the comptroller.

S.B. 393 limits the time in which the comptroller can reallocate certain sales and use tax revenues between governmental entities. This bill institutes an appeals process in which a city or county can dispute possible reallocation action by the comptroller.

As proposed, S.B. 393 amends current law relating to amended sales tax reports and the reallocation of sales tax revenue.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter I, Chapter 151, Tax Code, by adding Section 151.4065, as follows:

Sec. 151.4065. AMENDED REPORT. (a) Authorizes a taxpayer to amend a tax report filed under this chapter for a previous reporting period within the statute of limitations.

(b) Requires that the amended report be filed on the form prescribed by the comptroller of public accounts (comptroller) and include an explanation for the amendment and be signed by the taxpayer or the person authorized by the taxpayer to amend the return.

SECTION 2. Amends Subchapter F, Chapter 321, Tax Code, by adding Section 321.510, as follows:

Sec. 321.510. REALLOCATION OF MUNICIPAL OR LOCAL GOVERNMENTAL ENTITY TAX REVENUE. (a) Defines "local governmental entity" in this section.

(b) Provides that this section only applies if the comptroller intends to reallocate local tax revenue from a municipality or local governmental entity (LGE) to another municipality or LGE, and the amount the comptroller intends to reallocate as the result of a single instance is at least equal to the lesser of \$200,000 or an amount equal to 10 percent of the revenue received by the municipality or LGE under this chapter during the calendar year preceding the calendar year in which the reallocation will be made.

(c) Provides that this section does not apply to a refund.

(d) Requires the comptroller to establish administrative procedures for the examination of amended tax reports filed by taxpayers under Section 151.4065 that result in a reallocation amount described by Subsection (b).

(e) Requires the comptroller, if, subject to the criteria provided by this section, the comptroller concludes after an examination of taxpayer records that tax revenue collected by the comptroller has been sent incorrectly to a municipality or LGE under Section 321.502 (Distribution of Trust Funds), to send to that municipality or LGE written notice that the comptroller intends to reallocate the revenue to another municipality or LGE.

(f) Requires that the notice include certain information concerning the pending reallocation, regardless of whether the information is confidential under state law, including Sections 111.006 (Confidentiality of Information) and 151.027 (Confidentiality of Tax Information).

(g) Provides that the provision of confidential information to a municipality or LGE under this section does not affect the confidential nature of the information. Requires a municipality or LGE to use the information only in a manner that maintains the confidential nature of the information and prohibits the municipality or LGE from disclosing or releasing the information to the public.

(h) Authorizes a municipality or LGE that receives a notice under this section to request a review of the pending reallocation by submitting to the comptroller a written request for an independent audit review (IAR) on the issue of whether the original allocation of the revenue was incorrect. Requires the municipality or LGE to submit the request not later than the 30th day after the date the municipality or LGE receives the notice under this section.

(i) Requires the comptroller, not earlier than the 30th day or later than the 90th day after the date the comptroller receives a request for an IAR under Subsection (h), to conduct an IAR on whether the original allocation of the revenue was incorrect.

(j) Requires the comptroller to notify each affected taxpayer and affected municipality or LGE of the IAR. Authorizes the affected taxpayer and affected municipality or LGE to participate in the IAR.

(k) Requires the comptroller, after the conclusion of the IAR, to notify each affected municipality and LGE in writing whether the reallocation will occur.

SECTION 3. Amends Section 322.108(a), Tax Code, to provide that, except as provided by Subsection (b) (relating to prevailing over inconsistent provisions), certain sections, including Section 321.510 apply to the taxes imposed by this chapter in the same manner applicable to a municipality under Chapter 321 (Municipal Sales and Use Tax Act).

SECTION 4. Amends Subchapter F, Chapter 323, Tax Code, by adding Section 323.510, as follows:

Sec. 323.510. REALLOCATION OF COUNTY OR LOCAL GOVERNMENTAL ENTITY TAX REVENUE. (a) Defines "local governmental entity" in this section.

(b) Provides that this section only applies if the comptroller intends to reallocate local tax revenue from a county or LGE to another county or LGE, and the amount the comptroller intends to reallocate as the result of a single instance is at least equal to the lesser of \$200,000 or an amount equal to 10 percent of the revenue received by the county or LGE under this chapter during the calendar year preceding the calendar year in which the reallocation will be made.

- (c) Provides that this section does not apply to a refund.
- (d) Requires the comptroller to establish administrative procedures for the examination of amended tax reports filed by taxpayers under Section 151.4065 that result in a reallocation amount described by Subsection (b).
- (e) Requires the comptroller, if, subject to the criteria provided by this section, the comptroller concludes after an examination of taxpayer records that tax revenue collected by the comptroller has been sent incorrectly to a county or LGE under Section 321.502, to send to that county or LGE written notice that the comptroller intends to reallocate the revenue to another county or LGE.
- (f) Requires that the notice include certain information concerning the pending reallocation, regardless of whether the information is confidential under state law, including Sections 111.006 and 151.027.
- (g) Provides that the provision of confidential information to a county or LGE under this section does not affect the confidential nature of the information. Requires a county or LGE to use the information only in a manner that maintains the confidential nature of the information and prohibits the county or LGE from releasing the information to the public.
- (h) Authorizes a county or LGE that receives a notice under this section to request an IAR of the pending reallocation by submitting to the comptroller a written request for an IAR on the issue of whether the original allocation of the revenue was incorrect. Requires the county or LGE to submit the request not later than the 30th day after the date the county or LGE receives the notice under this section.
- (i) Requires the comptroller, not earlier than the 30th day or later than the 90th day after the date the comptroller receives a request for an IAR under Subsection (h), to conduct an IAR on whether the original allocation of the revenue was incorrect.
- (j) Requires the comptroller notify each affected taxpayer and affected county or LGE of the IAR. Authorizes the affected taxpayer and affected county or LGE to participate in the IAR.
- (k) Requires the comptroller, after the conclusion of the IAR, to notify each affected county and LGE in writing whether the reallocation will occur.

SECTION 5. Effective date: January 1, 2012.