

BILL ANALYSIS

Senate Research Center
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S.B. 70
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

What does this bill do?

- this bill creates a streamlined process for out-of-state sellers to collect sales tax on purchases made in Texas, enabling the state to collect online sales tax in accordance with the *South Dakota v. Wayfair* United States Supreme Court decision.

Purpose:

- to implement *South Dakota v. Wayfair* without creating an undue burden on out-of-state sellers.

As proposed, S.B. 70 amends current law relating to a single local use tax rate as an alternative to combined local use tax rates for computing the amount of local use taxes remote sellers are required to collect and to the allocation of tax revenue collected at that rate.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 2 (Section 151.0595, Tax Code), SECTION 3 (Section 403.107, Government Code), and SECTION 6 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the purpose of this Act is to provide an optional, simplified means of computing the amount of local use tax remote sellers are required to collect following the decision of the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

SECTION 2. Amends Subchapter C, Chapter 151, Tax Code, by adding Section 151.0595, as follows:

Sec. 151.0595. SINGLE LOCAL TAX RATE FOR REMOTE SELLERS. (a) Defines "remote seller."

(b) Requires a remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item made by the remote seller to compute the amount to collect and remit using:

(1) the combined rate of all applicable local use taxes authorized or governed by Title 3; or

(2) at the remote seller's election, the single local use tax rate published in the Texas Register as required by Subsection (d).

(c) Requires a remote seller who elects under Subsection (b)(2) to use the single local use tax rate to notify the comptroller of public accounts of the State of Texas (comptroller) of the election before using that rate. Provides that the election

applies to all sales of taxable items made by the remote seller unless the remote seller revokes the election by notifying the comptroller. Provides that the notice to the comptroller under this subsection must be in the form and manner provided by the comptroller.

(d) Provides that the single local use tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year, as determined under Subsection (e). Requires the comptroller, before the beginning of a calendar year, to publish in the Texas Register notice of the single local use tax rate that will be in effect for that calendar year.

(e) Requires the comptroller, as soon as practicable after the end of a state fiscal year, to determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(1) dividing the total amount of net local sales and use taxes remitted to the comptroller under this section and Title 3 (Local Taxation) during that state fiscal year by the total amount of net state sales and use taxes remitted to the comptroller under this chapter during that state fiscal year;

(2) multiplying the amount computed under Subdivision (1) by the rate provided by Section 151.051 (Sales Tax Imposed); and

(3) rounding the amount computed under Subdivision (2) to the nearest .0025.

(f) Authorizes a purchaser, notwithstanding Section 111.104(b) (relating to authorizing a tax refund to be filed with the comptroller), to annually apply for a refund of any amount by which the amount of use tax computed using the rate described by Subsection (b)(2) and paid by the purchaser exceeds the amount the purchaser would have paid if that tax had been computed using the rate described by Subsection (b)(1). Authorizes the comptroller to adopt rules regarding the procedure and proof required for the refund.

(g) Provides that a person storing, using, or consuming in this state a taxable item purchased from a remote seller is not liable for any additional amount of local use tax authorized or governed by Title 3 if the remote seller elects under Subsection (b)(2) to use the single local use tax rate and the person pays to the remote seller the amount of local use tax computed on the purchase using the single local use tax rate.

(h) Requires the comptroller to administer, collect, and enforce local use taxes computed using the single local use tax rate.

(i) Requires the comptroller to apportion and distribute revenue from local use taxes computed using the single local use tax rate as provided by Section 403.107 (Local Sales and Use Tax Fees), Government Code.

(j) Requires the comptroller to adopt rules to administer this section.

SECTION 3. Reenacts Section 403.107, Government Code, and amends it, as follows:

Sec. 403.107. New heading: SINGLE LOCAL USE TAXES COLLECTED BY
REMOTE SELLERS

(a) Requires the comptroller to deposit revenue remitted to the comptroller from taxes computed using the single local use tax rate under Section 151.0595(b)(2), Tax Code, in the state treasury and to keep records of the amount of money deposited, rather than collected, for each reporting period. Deletes existing text relating to fees imposed under

Section 151.059 (Fee Imposed in Lieu of Local Sales and Use Taxes). Requires money deposited under this subsection, rather than such fees, to be held in trust for the benefit of eligible taxing units, as determined under Subsection (b). Requires the comptroller to distribute money held in trust, rather than in the suspense accounts, under this section to each eligible taxing unit in the amount and manner provided by this section, rather than provided by federal law or this section.

(b) Provides that a local taxing unit is an eligible taxing unit for purposes of this section if it has adopted a sales and use tax authorized or governed by Title 3 (Local Taxation), Tax Code, rather than has adopted a sales and use tax under Chapter 321 (Municipal Sales and Use Tax Act), Chapter 322 (Sales and Use Taxes for Special Purpose Taxing Authorities), or Chapter 323 (County Sales and Use Tax Act), Tax Code, or has adopted a local sales and use tax governed in part by any provision of these chapters.

(c) Requires the comptroller, subject to Subsection (d), to transmit to each eligible taxing unit's treasurer, or to the officer performing the function of that office, on a monthly basis the taxing unit's share of money held in trust under Subsection (a), together with the pro rata share of any penalty or interest on delinquent taxes computed using the single local use tax rate that may be collected, rather than requiring the comptroller to transmit on a quarterly basis the taxing unit's share of the fees remitted to the comptroller together with the pro rata share of any penalty or interest on delinquent fees that may be collected.

(d) Requires the comptroller to retain a portion of each eligible taxing unit's share of money held in trust under Subsection (a), not to exceed five percent of the amount eligible to be transmitted to the taxing unit under Subsection (c), rather than requires the comptroller to retain in the suspense account for a taxing unit a portion of the taxing unit's share of the fees collected, not to exceed five percent of the amount remitted to the taxing unit. Authorizes the comptroller, from the amounts retained, to make refunds for overpayments of taxes computed using the single local use tax rate, to make refunds to purchasers as provided by Section 151.0595(f), Tax Code, and redeem dishonored checks and drafts deposited under Subsection (a), rather than to make, from the amounts retained in a taxing unit's suspense account, refunds for overpayments to the account and redeem dishonored checks and drafts deposited to the credit of the account.

(e) Requires the comptroller to compute for each calendar month the percentage of total sales and use tax allocations made pursuant to Title 3, Tax Code, including any local sales and use taxes governed by any provision of Title 3, Tax Code, to each eligible taxing unit, rather than requiring the comptroller, unless another method is required by federal law, to compute for each calendar quarter, the percentage of the total sales and use tax allocations made pursuant to Title 3 of the Tax Code. Requires the comptroller to determine each eligible taxing unit's share of the money held in trust from deposits under Subsection (a) for that month by applying the percentage computed under this subsection for the eligible taxing unit to the total amount held in trust from deposits for that month, rather than requiring the comptroller to apply that percentage to the total fees collected under Section 151.059, Tax Code, and allocated to eligible taxing unites in that quarter.

(f) Authorizes the comptroller to combine an eligible taxing unit's share of the money held in trust under Subsection (a) with other money held for that taxing unit, rather than authorizing the comptroller to combine an eligible taxing unit's share of the fees remitted or collected under Section 151.059, Tax Code, a suspense account under this section, or an allocation mad under this section with other trust or suspense accounts held for that taxing unit or other allocations made to that taxing unit under Title 3 of the Tax Code.

(g) Authorizes the comptroller to adopt rules to administer this section.

SECTION 4. Repealer: Section 151.059, Tax Code, as added by Chapter 291 (H.B. 2215), Acts of the 71st Legislature, Regular Session, 1989.

Repealer: Section 151.107(c) (relating to a requirement of nonresident persons to collect the tax imposed by this chapter with respect to the sale of tangible personal property to

the extent authorized by federal law), Tax Code, as added by Chapter 291 (H.B. 2215), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 5. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides that that liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 6. (a) Requires the comptroller, not later than October 1, 2019, to adopt any rules necessary to implement this Act.

(b) Provides that this Act does not require a remote seller, as defined by Section 151.0595, Tax Code, as added by this Act, to collect local use taxes on sales of taxable items made before October 1, 2019.

SECTION 7. Effective date: September 1, 2019.