HOUSE
RESEARCH
ORGANIZATION bill analysis   5/20/2015

SB 755
V. Taylor, et al.
(Button)

SUBJECT: Exempting certain software sales to hosting providers from the sales tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — D. Bonnen, Y. Davis, Button, Darby, Martinez Fischer, Murphy, Springer, C. Turner, Wray

0 nays

2 absent — Bohac, Parker

SENATE VOTE: On final passage, May 4 — 31-0

WITNESSES: *(On House companion bill, HB 3174)*
For — Chris Rosas, Rackspace; (*Registered, but did not testify:* Jeffrey Brooks, Texas Conservative Coalition; Dana Chiodo, TechAmerica; Dale Craymer, Texas Taxpayers and Research Association; Dachia Guatelli, Soft Layer Technologies, Inc.; John T. Montford, Rackspace; Fred Shannon, Hewlett Packard; Angela Smith and Sandy Ward, Fredericksburg Tea Party; David Kaplan; Matt Long)

Against — None

On — Brad Reynolds, Texas Comptroller of Public Accounts

BACKGROUND: Tax Code, sec. 151.009 defines "tangible personal property" to include a computer program. Under sec. 151.006, "sale for resale" includes the sale of tangible personal property or a taxable service to a purchaser who acquires property or service for the purpose of reselling it with or as a taxable item in the normal course of business in the form or condition in which it is acquired.

Sec. 151.302 exempts sales of taxable items for resale from the sales tax.

DIGEST: SB 755 explicitly would classify certain sales of software to a hosting provider as sales for resale, thus exempting those sales from the sales tax.

Specifically, the bill would exempt software licenses sold by a vendor to a provider, as long as they were sold by the provider to an unrelated user in the normal course of business and in the form or condition in which they were obtained from the vendor.

This exchange would qualify as sale for resale only if the provider:

- offered the unrelated user a selection of software that the public may purchase directly from the vendor; and
- executed a written contract with the user that specified the name of the software sold and included a charge to the user for computing hardware.

Routine maintenance of the computer program recommended by the vendor would not affect the application of these provisions.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. The bill would not affect tax liability accruing before its effective date.

SUPPORTERS SAY:

SB 755 would update state tax law to reflect the modern realities of software sales. The comptroller collects sales taxes both when a vendor sells a hosting provider software licenses and when the provider resells the licenses to end users. The software is taxed twice, even though the hosting provider makes no use of the software license. This is no different from charging a retailer sales tax both when the retailer purchases goods from a manufacturer and when it sells them to an end consumer.

This double taxation is detrimental because it results in tax pyramiding, in which an item is taxed multiple times before it reaches the end user, thus increasing the cost to the end user. Current law providing for the application of sales taxes to software has not been updated since 1984. The Legislature at that time could not have foreseen certain developments that have occurred since that time, including cloud computing, which is sometimes subject to this double-taxation.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The Legislative Budget Board's fiscal note indicates that this bill would
have a negative impact of $2.8 million through fiscal 2016-17 if the bill
took effect September 1, 2015. If the bill took effective June 1, 2015, it
would have a negative impact of $3.3 million.

The House companion bill, HB 3174 by Button, was placed on the
General State Calendar for May 13 but was not considered.