BILL ANALYSIS

Senate Research Center   S.B. 755
                                                                                           By: Taylor, Van et al.
                                                                                                       Finance
                                                                                                      6/9/2015
                                                                                                      Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The sale-for-resale exemption from sales tax has been part of the sales tax statute since first enacted in 1961, facilitating taxation only of the sale to the end user of a taxable item. For example, the sale of furniture by a manufacturer to a retail store is exempt as a sale-for-resale, as the tax will be collected on the final sale of the furniture to customers. Before the advent of Internet hosting, computer program purchases were transactions that occurred directly between a software vendor and an end user. State sales taxes were applied during these transactions. But the way computer software is purchased and sold has changed over the past decade. With the proliferation of Internet hosting services, including "cloud computing" services, computer programs are now being sold as part of a package of taxable services provided by Internet hosting companies. In these cases the program is sold twice: first to the Internet hosting company that purchases the software from a vendor, and then to the end user as part of the service package. Here, it is ambiguous as to whether each transaction involving the sale of a program used for Internet hosting services—first to the host company, second to the end user—is subject to sales tax or eligible for the sale-for-resale exception. This creates the potential for the double taxation of computer programs provided by Internet hosting providers.

S.B. 755 clarifies that computer programs sold through an Internet hosting provider qualifies as a sale-for-resale, not subject to state sales taxes. This change would ensure that computer programs are taxed just once, during that transaction where the end user purchases software as part of the hosting package. The added services and care provided by the Internet hosting provider do not change the fact that the computer program is purchased for use by the customer, not by the Internet hosting provider. Software purchased by the Internet hosting provider for its own use will remain taxable.

The committee substitute makes changes to lower the fiscal impact of the bill from $103.7 million per biennium to $3.3 million per biennium. Specifically, the substitute adds provisions further qualifying the types of computer programs that an Internet hosting provider may purchase, sell to end users, and be eligible for the sale-for-resale sales tax exception. Qualifying computer programs include those that are purchased from an unrelated vendor by an Internet hosting provider and sold to an unrelated end user as part of the hosting provider's normal course of business and in the form or condition that the program was purchased from the unrelated vendor. The substitute requires that the Internet hosting provider execute a contract with the end user that specifies the computer program's name and the charge for the computing hardware. The substitute also provides that the Internet hosting provider's routine maintenance of the computer program offered does not affect the taxability of the program's sale to the end user.

S.B. 755 amends current law relating to the application of the sales and use tax to certain computer program transactions.

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 Section 151.006, Tax Code, by adding Subsection (d), as follows:

(d) Provides that a sale for resale includes the sale of a computer program to a provider of Internet hosting who acquires the computer program from an unrelated vendor for the purpose of selling the right to use the computer program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the computer program. Provides that, for purposes of this subsection, the purchase of the computer program by the provider qualifies as a sale for resale only if the provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor and executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware. Provides that this subsection applies notwithstanding Section 151.302(b) (relating to the conditions necessary for tangible personal property to be considered resold), if the unrelated user purchases the right to use the computer program from the provider through the acquisition of a license and the provider does not retain the right to use the computer program under that license. Provides that the performance by the provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of this subsection. Defines "Internet hosting" for purposes of this subsection.

SECTION 2. Makes application of this Act to tax liability prospective.

SECTION 3. Effective date: upon passage or September 1, 2015.