

## **BILL ANALYSIS**

Senate Research Center  
84R9786 CBH-F

S.B. 755  
By: Taylor, Van  
Finance  
2/26/2015  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Before the advent of Internet hosting, computer software purchases were transactions that occurred directly between a software vendor and a user. State sales taxes were applied during these transactions. 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 software is now being sold as part of a package of taxable services provided by Internet hosting companies. In these cases the software being sold is purchased twice—first by the Internet hosting company that purchases the software from a vendor, then the hosting company resells that software to the end-user as part of the service package. Under state law, web-hosting is a form of data processing, which has been subject to sales tax since 1987.

Each transaction involving the sale of software used for Internet hosting services—first to the host company, second to the end-user—includes the application of state sales taxes. This creates an unusual problem where the same product, in this case software used for web-hosting services, is subject to double taxation.

S.B. 755 clarifies that software used for web-hosting should be taxed once, specifically 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 company do not change the fact that the software is purchased for use by the customer, not by the Internet hosting provider.

The problem of double taxing Internet hosting services places Texas at a disadvantage with regard to attracting and retaining Internet hosting companies. Other states, notably Virginia and Illinois, authorize these types of purchases to be sales tax-free. Given the ease with which customers can select out-of-state competitors, who invest nothing in Texas and who employ no Texas residents, Texas-based providers and customers could be placed at a significant disadvantage. Acknowledging the resale status of the transaction will help Texas competitively while eliminating the problem of double-taxation.

As proposed, 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 for the purpose of selling the right to use the computer program to an unrelated user of Internet hosting services. Provides that, notwithstanding Section 151.302(b) (relating to the conditions necessary for tangible personal property to be considered resold), this subsection applies regardless of whether the unrelated user of Internet hosting services purchases the right to use the computer program from the provider of Internet hosting through the acquisition of a license, for a

fee without a license, or as a part of a service. Defines "Internet hosting" for purposes of this subsection.

SECTION 2. Makes application of this Act prospective.

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