

BILL ANALYSIS

C.S.S.B. 153
By: Perry
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The comptroller of public accounts assesses a sales and use tax on any service that it considers a data processing service. Historically, the comptroller has excluded merchant credit and debit card processing services from these services, which results in these services being considered a nontaxable service or occurrence. However, it has been suggested that during recent audits the comptroller has questioned the exclusion of merchant credit and debit card processing services from these data processing services. This issue has raised concern among businesses as it has called into question their ability to rely on previous comptroller opinions, memoranda, and rulings holding that merchant credit card processing services involving the electronic transfer of money constitute a nontaxable occurrence. If fully implemented, this change in interpretation could result in Texas businesses paying hundreds of millions of dollars in additional taxes each year, which would be devastating to businesses across Texas, especially after a year of financial loss due to the COVID-19 pandemic. C.S.S.B. 153 seeks to address this issue by revising the definition of "data processing service" under the Limited Sales, Excise, and Use Tax Act.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 153 amends the Tax Code to exclude the following from the definition of "data processing service" under the Limited Sales, Excise, and Use Tax Act:

- settling of an electronic payment transaction by:
 - a downstream payment processor or point of sale payment processor, as those terms are defined by the Texas Administrative Code, that routes electronic payment information to a federally insured financial institution or to a payment card network that allows a person to accept a specific brand of debit or credit card by routing information and data to settle an electronic payment transaction;
 - a person who is engaged in the business of money transmission and required to obtain a money transmission license;
 - a federally insured financial institution that is organized under the laws of Texas, another state, or the U.S., or an affiliate of the institution;
 - a person who has entered into a sponsorship agreement with such a federally insured financial institution for the purpose of settling that entity's electronic payment transactions through a payment card network; or

- a payment card network that allows a person to accept a specific brand of debit or credit card by routing information and data to settle an electronic payment transaction; and
- for purposes of compliance with standards set by the Payment Card Industry Security Standards Council, services exclusively to encrypt electronic payment information for acceptance onto a payment card network that allows a person to accept a specific brand of debit or credit card by routing information and data to settle an electronic payment transaction.

The bill defines "settling of an electronic payment transaction" as the authorization, clearing, or funding of a payment made by credit card, debit card, gift card, stored value card, electronic check, virtual currency, loyalty program currency such as points or miles, or a similar method. The term does not include charges by a marketplace provider who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers.

EFFECTIVE DATE

October 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 153 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute and the engrossed both exclude from the definition of "data processing service" the settling of an electronic payment transaction by a person who has entered into a sponsorship agreement with a federally insured financial institution for certain purposes relating to that entity's electronic payment transactions through a payment card network. The engrossed specified those purposes as relating to the processing of such transactions whereas the substitute specifies those purposes as relating to the settling of such transactions.