

- SUBJECT:** Limiting printers' sales and use tax liability for multistate direct mailings
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 8 ayes — Oliveira, Hartnett, Bonnen, Y. Davis, Heflin, Keffer, Ramsay, Ritter
- 0 nays
- 3 absent — McCall, Craddick, Hilbert
- WITNESSES:** For — Gale Lawler, Print Tax Services
- Against — None
- On — John Heleman, Comptroller of Public Accounts
- BACKGROUND:** Texas levies a 6.25 percent sales tax on many retail goods and services and a 6.25 percent use tax on items sold for storage, use, or consumption in the state (Tax Code, Chapter 151, Subchapters C and D). Sellers, typically retailers, must include the taxes in their sales prices, issue receipts, and collect and remit the taxes quarterly to the comptroller. No sales tax is owed on printed materials mailed out of state.
- DIGEST:** CSHB 1098 would amend Tax Code, sec. 151.052 to establish a rebuttable presumption that printed materials mailed to recipients other than the customer and produced by a printer in Texas or purchased in Texas are to be used in Texas. In that case, the printer still would have to collect the applicable taxes. To overcome this presumption, the customer would have to issue an exemption certificate to the printer stating that the materials were to be distributed to both in-state and out-of-state recipients and that the customer would pay any taxes that became due. In that case, the printer no longer would have to collect and remit sales and use taxes but would have to file a special use-tax report as provided under Tax Code, sec. 151.407. The bill also would amend the Tax Code to apply the same change to the use tax. The proposed changes would apply only to printers with web offset or rotogravure equipment (i.e., excluding photocopying services).

The bill specifies that it would not create a new sales or use tax or exemption, nor would it affect the imposition of any tax or the granting of any exemption. It also would not express or imply the Legislature's intent to affirm or deny any tax liability on items mailed into the state.

CSHB 1098 would take effect July 1, 2001, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

By explicitly shifting most of the sales-tax liability for mailed printed material from printers to their customers, CSHB 1098 simply would put standard practice into law. Current law is ambiguous and can be burdensome, given the nature of mass direct-mail advertising. By creating a rebuttable presumption that the printer is responsible for paying any tax, the bill would encourage printers to request exemption certificates before agreeing to print large multistate and national mass mailings.

When printers produce mass mailings, they receive address data for labeling purposes but typically do not have access to detailed destination information on mailing lists because that information is proprietary to their customers. Consequently, many large retailers who purchase printed materials for direct-mail multistate advertising customarily assess and remit their own taxes, which the printer otherwise would have to do.

CSHB 1098 would make it clear that Texas printers must collect sales and use taxes on in-state jobs and customers are responsible for all taxes on multi-state mailings. It would alleviate printers from potentially having to sort out hundreds of thousands of pieces of tax-exempt mail destined for other states, which could compromise sensitive client information in highly competitive industries. Out-of-state printers doing business in Texas who mail material into Texas would not have to calculate any use tax owed.

Because the tax base includes intangible costs (photography, layout, etc.), materials, and various costs besides printing, requiring customers to assess themselves would increase the accuracy of taxes paid and the probability that customers would pay all taxes owed. The state, which already audits large companies, would save time and money by not having to audit printers.

CSHB 1098 would create no new taxes or exemptions. It would, however, preclude collection of back taxes from printers who have no way of knowing for certain the final destinations of the materials they mail.

The bill would apply only to large national printers and their clients. Typically, only large printers use the web offset and photogravure equipment required to produce large-scale mass mailings, typically 250,000 pieces or more. The bill also would not apply to bulk shipments that are not individually addressed.

Florida enacted a similar law last year that is working well. Tennessee excludes commercial printers and taxes distributors of mailed advertising.

OPPONENTS
SAY:

CSHB 1098 would single out one segment of a particular industry for favorable tax treatment. Texas' sales and use tax system is predominantly seller-based. It would not be fair to other sellers to remove this responsibility from one class of sellers. It also would be unfair to retailers to place the burden of assessment and calculation on them.

OTHER
OPPONENTS
SAY:

The mechanisms that this bill would set up are too vague. It would make more sense to have the customers pay all the taxes they owe to the printers for remittance to the state, rather than set up dual assessment and collection tracks for one industry.

NOTES:

The committee substitute added the provisions that would require customers to certify multistate mailings and printers to file use tax reports.