

SUBJECT: Assigning jurisdiction for decisions of a business' out-of-state nexus

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 5 ayes — J. Keffer, Villarreal, Grusendorf, Luna, Ritter
0 nays
4 absent — Edwards, Paxton, Smithee, Woolley

WITNESSES: For — John Kroll, Customs Pointe Inc./ Net Choice Coalition
Against — None

BACKGROUND: Businesses that sell products to customers in another state are not required to collect taxes for that state, unless the business has "nexus" in that state under the Commerce and Due Process clauses of the U.S. Constitution, according to a U.S. Supreme Court decision *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). A judicial decision in Texas is be honored in other states' courts under the full faith and credit clause of the U.S. Constitution.

DIGEST: CSHB 3406 would assign jurisdiction to a district court for proceedings seeking declaratory judgment on the matter of nexus when another state asserted that sales taxes were owed for business in that state.

The bill would take effect September 1, 2005, and would apply to causes of action accruing on or after that date.

SUPPORTERS SAY: Small businesses that sell products in other states but have nexus in Texas may be sued by another state to collect sales and use taxes. Although the business does not have nexus in the other state, it must travel there to defend itself in the matter before the court, which can be expensive. This bill would permit the decision of nexus to be decided in Texas' district courts.

If a business were found to have nexus in another state, that state could pursue the business for any sales and use taxes owed. This bill would not change that jurisdiction.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute would address only matters relating to nexus in another state, not establishing whether a business had nexus in Texas.