

- SUBJECT:** Declaratory relief on liability for sales and use taxes of other states.
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 5 ayes — B. Cook, Strama, Raymond, Talton, Woolley
0 nays
4 absent — P. King, Madden, Martinez Fischer, Miller
- WITNESSES:** For — John Kroll, Coalition for Appropriate Sales Tax Law Enactment
(*Registered, but did not testify*: Shelton Green, Texas Association of Business)
Against — None
- BACKGROUND:** To gain jurisdiction over out-of-state businesses, courts must find the business has a nexus to the state trying to bring the business under its laws. If no nexus exists to create long-arm jurisdiction by the state, the state is considered to be unduly burdening interstate commerce in violation of Sec. 8, Art. I of the U.S. Constitution. The U.S. Supreme Court, in *National Geographic Society v. California Bd. of Equalization*, 430 U.S. 551 (1977) provided some guidance that the presence of a sales force, plant, or office in the taxing state might indicate a vendor must collect a sales or use tax. In *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959) the court said its rulings leave room for controversy and confusion and provide little guidance to lower courts in exercising the State's power of taxation. Lower courts have differing interpretations of nexus, resulting in inconsistent application of long-arm jurisdiction by each state.
- DIGEST:** HB 2010 would add sec. 37.0055 to the Civil Practice and Remedies Code to provide a district court with original jurisdiction for proceedings seeking a declaratory judgment involving:
- a business organized under Texas laws , or otherwise qualified to do business in Texas, or a business owned by a Texas resident seeking declaratory relief; or
 - a responding party that was an official of another state asserting a

claim that the party seeking declaratory relief was required to collect sales or use taxes for that state based on conduct of the business that occurred in whole or in part within the state.

A business covered by these provisions would be entitled to declaratory relief on whether the collection of another state's sales or use taxes constituted an undue burden on interstate commerce under Sec. 8, Art I of the U. S. Constitution. In determining whether to grant declaratory relief to the business, a court would consider:

- the factual circumstances of the business's operations that gave rise to the demand by the other state; and
- the decisions of other courts interpreting Sec. 8, Article I, United States Constitution.

The bill would take effect September 1, 2007, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS
SAY:**

HB 2010 would provide recourse for small businesses in Texas, which have been the frequent target of tax collectors in other states who claim the business should be collecting sales and use tax for that state's coffers. The bill would allow Texas courts to consider the question of whether a Texas business had a nexus with the other state sufficient to create jurisdiction for tax collection purposes. Small businesses at great expense now must travel to these states, hire local counsel, and argue over nexus, or connection to the state, that is attempting to regulate them. Often, simply spending several days in that state to attend the hearing is enough to establish nexus based on that court's interpretation of nexus. This can be unduly harsh for Texas small businesses.

The bill simply would allow a Texas business to be heard in a Texas court on the issue of nexus, rather than being forced to travel to another state. The inconsistent long-arm jurisdiction application has resulted in harm to small businesses in Texas. HB 2010 would give local district courts original jurisdiction over the matter of nexus and provide factors for the court to consider, based on traditional interpretations of nexus. HB 2010 would keep Texas businesses in Texas court and ensure a fair hearing on their legal responsibilities to other states in collecting sales and use taxes.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

During the 2005 regular session, an identical bill, HB 3406 by Rose, was reported favorably by the Ways and Means Committee and placed on the General State Calendar for May 12, but no further action was taken.