

- SUBJECT:** Creating a single local use tax rate as an alternative for remote sellers
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 10 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, Sanford, Shaheen, Wray
- 0 nays
- 1 absent — E. Rodriguez
- WITNESSES:** For — (*Registered, but did not testify:* Dana Chiodo, International Council of Shopping Centers; James Hines, Texas Association of Business; Dale Craymer, Texas Taxpayers and Research Association)
- Against — None
- On — John Kroll, City of Humble; (*Registered, but did not testify:* Karey Barton, Comptroller of Public Accounts)
- BACKGROUND:** Title 3 of the Tax Code regulates the collection, administration, and enforcement of local sales and use taxes. Government Code sec. 403.107 regulates the distribution of local sales and use tax revenue to eligible taxing units.
- In *South Dakota v. Wayfair, Inc.*, the U.S. Supreme Court decided a state may require certain sellers who are not physically located in that state to collect state and local taxes. As a result, the comptroller may now require remote sellers to Texas residents to collect local sales and use taxes. Because Texas has about 1,600 local taxing jurisdictions, many of which overlap, concerns have been raised regarding the ability of remote sellers to correctly identify and collect applicable local sales and use taxes.
- DIGEST:** CSHB 2153 would provide an optional means of computing the amount of local use tax that sellers without a physical presence in Texas would be required to collect on taxable items and remit to the comptroller.

Tax rates. The bill would establish a single local tax rate for use by a remote seller, defined as a seller whose only Texas activities were soliciting orders for taxable items by mail or through other media, including catalogs, computer data bases, or other communication systems. A remote seller would be required to collect and remit local use taxes using either:

- the combined rate of all applicable local use taxes; or
- at the remote seller's election, the single local use tax rate.

The single local use tax rate effective in a calendar year would be equal to the estimated average rate of local sales and use taxes imposed in Texas during the preceding state fiscal year. The rate would be determined by the comptroller by:

- dividing the total amount of net local sales and use taxes remitted to the comptroller during that state fiscal year by the total amount of net state sales and use taxes remitted by remote sellers;
- multiplying that amount by the 6.25 percent state sales tax rate; and
- rounding the computed amount to the nearest .0025.

The comptroller would be required to calculate the single local tax rate as soon as practicable after the end of the state fiscal year and publish that rate in the Texas Register.

CSHB 2153 would establish the single local use tax rate at 1.75 percent for the period beginning October 1, 2019, and ending December 31, 2019.

A remote seller who elected to use the single local use tax rate would be required to notify the comptroller before using that rate. The elected rate would apply to all sales of taxable items made by the remote seller unless the remote seller revoked the election by notifying the comptroller.

The bill would allow a purchaser to annually apply for a refund of any amount paid under the single local use rate that exceeded the amount the

purchaser would have paid using the combined local use rate. A person who purchased a taxable item from a remote seller who had elected to use the single local use tax rate would not be liable for any additional amount of authorized local use tax.

The comptroller would administer, collect, and enforce local use taxes computed under the single local use tax rate.

Revenue distribution. The bill would revise Government Code requirements for the comptroller to apportion and distribute revenue from local sales and use taxes, including taxes computed using the single local use tax rate. Revenue would be transmitted on a monthly, instead of a quarterly, basis to eligible taxing units.

The comptroller would be authorized to adopt rules to administer the single local use tax rate and distribute revenue to eligible taxing units.

The bill would repeal a section of the Tax Code allowing remote sellers to pay a fee to the comptroller in lieu of all local sales and use taxes.

A remote seller would not be required to collect local use taxes on sales of taxable items before the effective date of the bill.

The bill would take effect October 1, 2019.

NOTES:

According to the Legislative Budget Board, CSHB 2153 would result in no significant fiscal implications for local governments in the aggregate. While there could be some variance in the distribution of revenue among jurisdictions compared with the distribution that would occur were all remote sellers required to collect and remit tax at applicable local combined rates, it would not be expected to be significant in relation to the total allocations of local sales and use tax revenues.