

BILL ANALYSIS

Senate Research Center

H.B. 1845
By: Oliveira (Van de Putte)
Finance
5/9/2001
Engrossed

DIGEST AND PURPOSE

There is concern that as sales over the Internet expand, each state faces further erosion of its tax base. Texas, along with 31 other participating states and 6 observing states, is a participating member in the federal Streamlined Sales Tax Project (SSTP) which has the purpose of designing a simplified sales collection system that can be used by traditional retailers as well as sellers involved in e-commerce. The expressed goal of SSTP is to substantially reduce the tax collection burden on retailers by creating uniformity among states and simplifying audit and administrative procedures with the use of emerging technologies. If the burden on retailers is reduced, out-of-state retailers may voluntarily collect use taxes and remit them to member states. Thus, states will be able to capture revenue that is currently uncollected. H.B. 1845 establishes the Simplified Sales and Use Tax Administration Act to reflect SSTP's proposed uniform act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2D, Tax Code, by adding Chapter 142, as follows:

CHAPTER 142. SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

Sec. 142.001. TITLE. Authorizes this chapter to be cited as the Simplified Sales and Use Tax Administration Act.

Sec. 142.002. DEFINITIONS. Defines "agreement," "certified automated system," "certified service provider," "sales tax," "seller," and "use tax."

Sec. 142.003. LEGISLATIVE FINDING. Sets forth legislative findings.

Sec. 142.004. NEGOTIATIONS. Requires this state to enter into multistate discussions for the purposes of reviewing or amending the agreement embodying the simplification requirements prescribed by Section 142.007. Authorizes this state to be represented by not more than four delegates for purposes of those discussions.

Sec. 142.005. AUTHORITY TO ENTER INTO AGREEMENT. (a) Provides that the comptroller is authorized and directed to participate in the development of the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. Authorizes the comptroller, in the development of the agreement, to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

(b) Authorizes the comptroller or the comptroller's designee to represent this state before the other states that are signatories to the agreement.

Sec. 142.006. RELATIONSHIP TO STATE LAW. Provides that the agreement authorized by this chapter does not, in whole or part, invalidate or amend a law of this state. Provides that adoption of the agreement by this state does not amend or modify a law of this state. Requires implementation of a condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, to be by the action of this state.

Sec. 142.007. AGREEMENT REQUIREMENTS. (a) Prohibits the comptroller from entering into the agreement authorized by this chapter unless the agreement requires each state to comply with the requirements prescribed by this section.

(b) Requires the agreement to set restrictions to limit over time the number of state rates.

(c) Requires the agreement to establish uniform standards for the sourcing of transactions to taxing jurisdictions; the administration of exempt sales; and sales and use tax returns and remittances.

(d) Requires the agreement to provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(e) Requires the agreement to provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(f) Requires the agreement to provide for reduction of the burdens of complying with local sales and use taxes through: restricting variances between the state and local tax bases; requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions; restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(g) Requires the agreement to outline any monetary allowances that are to be provided by the states to sellers or certified service providers. Requires the agreement to allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2002.

(h) Requires the agreement to require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(i) Requires the agreement to require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(j) Requires the agreement to provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Sec. 142.008. COOPERATING SOVEREIGNS. Provides that the agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions. Provides that the agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Sec. 142.009. LIMITED BINDING AND BENEFICIAL EFFECT. (a) Provides that the agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states. Provides that a person, other than a member state, is not an intended beneficiary of the agreement. Provides that a benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Provides that consistent with Subsection (a), a person does not have a cause of action or defense under the agreement or by virtue of this state's approval of the agreement. Prohibits a person from challenging, in any action brought under any law, an action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state, on the ground that the action or inaction is inconsistent with the agreement.

(c) Prohibits a law of this state, or the application of the law, from being declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Sec. 142.010. SELLER AND THIRD PARTY LIABILITY. (a) Provides that a certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. Provides that as the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions the provider processes for the seller except as provided by this section.

(b) Provides that a seller that contracts with a certified service provider is not liable to this state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. Provides that in the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. Provides that a seller is subject to audit for transactions not processed by the certified service provider. Authorizes the member states acting jointly to perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(c) Provides that a person that provides a certified automated system is responsible for the proper functioning of that system and is liable to this state for underpayments of tax attributable to errors in the functioning of the certified automated system. Provides that a seller that uses a certified automated system remains responsible and is liable to this state for reporting and remitting tax.

(d) Provides that a seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

SECTION 2. Effective date: upon passage or September 1, 2001.