

## **BILL ANALYSIS**

Senate Research Center  
85R22779 BEF-D

C.S.S.B. 1713  
By: Uresti  
Finance  
4/24/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1713 does not expand a tax, levy a tax, increase a tax, or change who owes the tax, it only changes who is required to send the tax to the state. Under current law, when a person makes a purchase from an out-of-state online retailer, they are required to send the sales tax in to the Texas comptroller of public accounts (comptroller) separate from their purchase. This requirement is little known, and rarely ever complied with. S.B. 1713 expands the sales tax nexus threshold for out-of-state retailers, by establishing an economic presence standard for sales tax purposes. This would require large out-of-state (mostly online) retailers to collect sales tax when a person in Texas makes a purchase, and remit it to the state in the same way Texas based companies are required to.

Currently, businesses must have a physical nexus, or presence, in Texas in order to collect the Texas sales tax. Many online retailers that collectively sell billions in goods and services to Texans are not considered as having a physical nexus in Texas and thus are not required to collect and remit Texas sales tax. This disadvantages Texas brick-and-mortar and Texas based online retailers as they must collect and remit sales tax, while online out of state retailers do not.

Studies have estimated that Texas is not collecting anywhere between \$247 million and \$1.8 billion in sales taxes per year. Given that e-commerce is now 8.3 percent of all commerce—almost three times the portion of a decade ago and rising—the state should update our sales tax system in order to better reflect the current economic climate. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1713 amends current law relating to the collection of, and notices and reports regarding, state sales and use taxes and provides an administrative penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 2 (Section 151.013, Tax Code) and SECTION 3 (Sections 151.123 and 151.124, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 151.008(b), Tax Code, to redefine "seller" and "retailer."

SECTION 2. Amends Subchapter A, Chapter 151, Tax Code, by adding Section 151.013, as follows:

Sec. 151.013. MARKETPLACE PROVIDERS AND MARKETPLACE SELLERS. (a)  
Defines "marketplace provider" and "marketplace seller."

(b) Provides that, for purposes of this section:

(1) a person facilitates the sale of a taxable item if the person provides the forum, including an Internet website or catalog, in which or by means of which the sale takes place or the offer of sale is accepted and the person,

or an affiliate of the person, collects, or contracts with another person to collect, the amount paid by the purchaser to the seller; and

(2) two persons are affiliated if one person has a direct or indirect ownership interest in the other person of more than five percent or another person or group of affiliated persons has a direct or indirect ownership interest in each of the two persons of more than five percent.

(c) Provides that the facilitation of a sale by a marketplace provider that results in a sale by a marketplace seller is considered the making of a sale by the marketplace provider for purposes of Sections 151.008(a) (relating to the definition of "seller" and "retailer"), 151.052 (Collection by Retailer), and 151.103 (Collection By Retailer; Purchaser's Receipt), if the marketplace provider holds a certain registration or permit, or the marketplace provider holds a certain registration and the marketplace seller does not hold a permit under Subchapter F (Sales Tax Permits).

(d) Provides that, subject to Subsection (f), a marketplace provider is not subject to liability under Subchapter L (Prohibited Acts and Civil and Criminal Penalties) for failing to collect or remit the appropriate amount of tax imposed on a sale if the marketplace provider can show that, in determining the amount, the marketplace provider relied exclusively on information provided by the marketplace seller. Provides that this subsection does not apply if the marketplace provider and the marketplace seller are affiliated.

(e) Provides that, subject to Subsection (f), a marketplace seller is not required to collect and remit the tax imposed on a sale and is not subject to liability under Subchapter L for failing to collect and remit the appropriate amount of tax imposed on the sale if:

(1) the sale is considered to be made by a marketplace provider under Subsection (c);

(2) the marketplace seller enters into an agreement with the marketplace provider, as provided by Texas comptroller of public accounts (comptroller) rule, under which the marketplace provider is obligated to collect and remit the tax due on the sale; and

(3) the marketplace seller can show that any failure by the marketplace provider to collect and remit the tax on the sale was not caused by the marketplace seller providing incorrect information to the marketplace provider.

(f) Provides that a marketplace provider and marketplace seller that are affiliated are jointly and severally liable for any tax the marketplace provider fails to collect and remit that is imposed in connection with a sale of a taxable item by the marketplace seller that is facilitated by the marketplace provider.

(g) Provides that, notwithstanding Subsection (a), a person described by Section 151.108(b) (relating to providing that a person whose only activity in this state is conducted as a user of Internet hosting is not engaged in business in this state) or (c) (relating to providing that a person providing Internet hosting is not required to perform certain actions) is not a marketplace provider or marketplace seller with respect to the activities described by Section 151.108(b) or (c).

(h) Authorizes the comptroller to adopt rules necessary to implement and administer this section, including rules establishing the requirements for a person to be considered a marketplace provider.

SECTION 3. Amends Chapter 151, Tax Code, by adding Subchapter D-1, as follows:

SUBCHAPTER D-1. NOTICE AND REPORT BY RETAILERS WHO DO NOT COLLECT  
USE TAX

Sec. 151.121. APPLICABILITY. (a) Provides that this subchapter applies only to the sale of a taxable item for storage, use, or consumption in this state by a retailer who meets certain criteria.

(b) Provides that, for purposes of Subsection (a), the sale of a taxable item delivered to a purchaser in this state is presumed to be the sale of a taxable item for storage, use, or consumption in this state.

(c) Provides that this subchapter applies to a retailer regardless of whether the retailer has a physical presence in this state.

Sec. 151.122. NOTICE IN CONNECTION WITH SALE. Requires a retailer who makes a sale to which this subchapter applies to provide written notice to the purchaser that use tax is due on certain purchases from the retailer and that the State of Texas requires the purchaser to file a tax report.

Sec. 151.123. ANNUAL NOTICE TO PURCHASER. (a) Requires a retailer, not later than January 31 of each year, to provide to each person who made in the preceding calendar year one or more purchases to which this subchapter applies a written notice including certain information.

(b) Requires a retailer to send the required notice to each purchaser by first class mail and prohibits the retailer from including the notice with any other shipment. Requires that the exterior of the mailing include certain information.

Sec. 151.124. ANNUAL STATEMENT TO COMPTROLLER. (a) Authorizes the comptroller by rule to require a retailer to submit to the comptroller an annual statement describing all sales to which this subchapter applies made to each purchaser in a calendar year.

(b) Authorizes rules under this section to prescribe the content, form, and format of a statement and the date the statement is due.

Sec. 151.125. ADMINISTRATIVE PENALTY. (a) Authorizes the comptroller to impose an administrative penalty on a retailer who fails to provide certain required notice or submit certain required information.

(b) Requires that the amount of the penalty be based on certain factors.

(c) Authorizes the enforcement of the penalty to be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the comptroller to contest the affidavit as provided by those rules.

(d) Authorizes an administrative penalty collected under this section to be appropriated only to the comptroller for the purpose of administering this subchapter.

(e) Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 4. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that that liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 5. Provides that Section 151.123, Tax Code, as added by this Act, applies only to sales made on or after the effective date of this Act. Requires a retailer to provide the initial notice required by that section not later than January 31, 2019.

SECTION 6. Effective date: January 1, 2018.