

## **BILL ANALYSIS**

Senate Research Center  
87R1081 SMT-D

S.B. 153  
By: Perry  
Finance  
4/8/2021  
As Filed

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

The Comptroller of Public Accounts of the State of Texas (comptroller) assesses a use/sales tax on any service that it construes as coming within the definition of the term "data processing service." Historically, the comptroller has excluded merchant credit/debit card processing services from the definition of "data processing service," resulting in these services being considered a non-taxable service or occurrence. However, stakeholders have reported that during recent audits the comptroller has called into question the exclusion of merchant credit/debit card processing services from the definition of "data processing service."

This issue has raised concern among businesses as it has called into question their ability to rely on the previous comptroller opinions, memos, and rulings which hold that merchant credit card processing services involving the electronic transfer of money constitute a nontaxable occurrence.

If fully implemented, this change in interpretation could result in Texas businesses paying hundreds of millions of dollars in additional taxes each year. This change would occur despite no change to state law or administrative rules at the comptroller's office relating to expanding the definition of "data processing service."

It would be devastating to businesses across Texas, especially after a year of financial loss due to the COVID-19 pandemic. Additionally, the Texas Legislature should be solely responsible for a significant change that would create such a large tax increase on Texas businesses.

As proposed, S.B. 153 amends current law relating to the exclusion of certain payment processing services from the definition of "data processing service" for purposes of sales and use taxes.

### **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 Section 151.0035, Tax Code, to provide that "data processing services" does not include certain payment processing services, including the processing of a payment made by credit card or debit card. Makes nonsubstantive changes.

SECTION 2. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act and 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 3. Effective date: September 1, 2021.