

## **BILL ANALYSIS**

Senate Research Center  
87R19068 SMT-D

C.S.S.B. 153  
By: Perry  
Finance  
4/12/2021  
Committee Report (Substituted)

### **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.

(Original Author's / Sponsor's Statement of Intent)

C.S.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, as follows:

Sec. 151.0035. "DATA PROCESSING SERVICE". (a) Creates this subsection from existing text and makes nonsubstantive changes.

(b) Creates this subsection from existing text. Provides that "data processing service" does not include:

(1) creates this subdivision from existing text and makes a nonsubstantive change;

(2) services exclusively to encrypt electronic payment information for acceptance onto a payment card network described by Subdivision (3)(D)

to comply with standards set by the Payment Card Industry Security Standards Council; or

(3) settling of an electronic payment transaction by:

(A) a downstream payment processor or point of sale payment processor that routes electronic payment information to an entity described by Paragraph (B) or (D) or to a person who is engaged in the business of money transmission and required to obtain a license under Section 151.302(a) (relating to the criteria under which a person is authorized to engage in the business of money transmission in this state), Finance Code;

(B) a federally insured financial institution, as defined by Section 201.101 (Definitions), Finance Code, that is organized under the laws of this state, another state, or the United States, or an affiliate of the institution;

(C) a person who has entered into a sponsorship agreement with an entity described by Paragraph (B) for the purpose of processing that entity's electronic payment transactions through a payment card network; or

(D) a payment card network that allows a person to accept a specific brand of debit or credit card by routing information and data to settle an electronic payment transaction.

(c) Defines "downstream payment processor," "point of sale payment processor," and "settling of an electronic payment transaction" for purposes of Subsection (b)(3).

(d) Creates this subsection from existing text and makes no further 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: October 1, 2021.