



**To the Mayor and Members of the City Council**

**January 14, 2020**

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**SUBJECT: OVERVIEW OF RECENT LEGISLATIVE CHANGES RELATING TO SALES TAX SOURCING**

This Informal Report to the Mayor and City Council presents information regarding recent legislation passed during the 2019 legislative session relating to sales tax sourcing.

**Changes in State Law**

In response to the United States Supreme Court decision in *South Dakota v. Wayfair* (2018) and recent Wayfair-related legislation passed during the 2019 legislative session, the Texas Comptroller of Public Accounts (“Comptroller”) published proposed rule changes in the Texas Register on January 3, 2020. For Texas cities, the proposal changes the sales tax sourcing of certain internet marketplace purchases from the point of distribution to the destination city.

The Wayfair opinion concluded that state and local sales taxes may be collected from online, or “remote,” sellers that have no physical presence in a state. In order to fully implement Wayfair, the Texas legislature passed two bills during the 2019 legislative session:

- H.B. 1525 requires online marketplace providers (Amazon, eBay, UberEats, Door Dash, etc.) to collect and remit sales taxes on marketplace sales. Prior to this change, individual sellers in the marketplace would collect and remit the sales tax. Additionally, it requires the sales taxes associated with marketplace sales to be sourced to the delivery destination.
- H.B. 2153 gives remote sellers the option to either: (1) collect and remit the actual sales taxes owed based upon the shipping destination; or (2) collect a simplified “single local use tax rate” of 1.75 percent on all sales. Remote sellers who collect the single local use tax rate send the money to the Comptroller. The Comptroller remits the revenue to local taxing entities based upon their proportion of the local sales tax base.

The table below illustrates the effect of H.B. 1525 on marketplace purchases from providers such as Amazon, eBay, Uber Eats or, Door Dash.

Prior to H.B 1525		Post H.B 1525	
Responsibility for Collection & Remittance of Sales Tax	Local Jurisdiction Credited with the Sales Tax	Responsibility for Collection & Remittance of Sales Tax	Local Jurisdiction Credited with the Sales Tax
Collection: Individual Seller	Seller's Location	Marketplace	Delivery Location
Remittance: Seller			

\* Delivery charges by third party carriers are not subject to sales tax as long as the third party carrier only provides transportation and does not sell the taxable item being delivered (Texas Administrative Code Section 3.303).

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The proposed rules provide additional considerations for sales tax sourcing. For example, if a seller fulfills an internet order at a place of business in Texas, the sale is completed at the place of business where the internet order was fulfilled. Thus, the local portion of the sales tax collected would be remitted to the jurisdiction where the sale was completed.

The proposed rules are in the 30-day public comment period. Additional changes may occur. Staff will continue to monitor the rule-making process and provide updates to Mayor and City Council as necessary.

**Fiscal Analysis**

The Comptroller estimates the changes to state law will result in a positive impact of \$550,000,000 to the State through the biennium ending August 31, 2021. The expected increases in tax collections are attributable to greater efficiency of tax administration, convenience, and avoidance of undue burdens for taxpayers when responsibility for collection and remittance rests with marketplace providers rather than individual sellers.

H.B.1525 and 2153 are not expected to have any effect on the City's expense for current Chapter 380 Agreements since 380 programs are calculated on the basis of taxes actually received by the City.

The City does not have access to the detailed sales tax collection records of private businesses so a precise analysis of financial impact is impractical. The City's Planning and Data Analytics Department estimated an overall increase of 4% in sales tax for fiscal year 2020 from the fiscal year 2019 total. The estimated increase is primarily based on normal projected growth trends. Sales Tax revenues will continue to be closely monitored and reported to the City Council on a monthly basis.

The Comptroller conducts audits of businesses in Texas to ensure that Texas tax laws are applied uniformly, deter tax evasion, promote voluntary compliance, and educate tax payers. The City's Planning and Data Analytics Department utilizes summarized sales tax information provided by the Comptroller to formulate sales tax revenue trends and projections. The summarized sales tax information is confidential, and is not to be made available to the public. A city may use the summarized information for the purpose of economic forecasting (Tex. Tax Code 321.3022(c)).

If you have any questions, please call Terry Hanson, Assistant Director of Planning and Data Analytics, at 817-392-7934 or Reginald Zeno, Director of Financial Management Services / Chief Financial Officer, at 817-392-8500.

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