

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 12, 2011**

**TO:** Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB2403** by Otto (relating to retailers engaged in business in this state for purposes of sales and use taxes.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2403, Committee Report 1st House, Substituted: a positive impact of \$16,000,000 through the biennium ending August 31, 2013.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$6,000,000
2013	\$10,000,000
2014	\$12,000,000
2015	\$15,000,000
2016	\$18,000,000

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund 1</i>	Probable Revenue Gain from <i>Cities</i>	Probable Revenue Gain from <i>Transit Authorities</i>	Probable Revenue Gain from <i>Counties and Special Districts</i>
2012	\$6,000,000	\$1,200,000	\$400,000	\$200,000
2013	\$10,000,000	\$1,900,000	\$600,000	\$300,000
2014	\$12,000,000	\$2,300,000	\$700,000	\$400,000
2015	\$15,000,000	\$2,900,000	\$900,000	\$500,000
2016	\$18,000,000	\$3,500,000	\$1,100,000	\$600,000

**Fiscal Analysis**

The bill would amend Chapter 151 of the Tax Code, regarding the sales and use tax.

The bill would amend Section 151.008(b) to provide that the terms "seller" and "retailer" include a person who by agreement with an owner of tangible personal property has been entrusted with possession of and authority to sell, lease, or rent the property without additional action on the part of the owner.

The bill would amend Section 151.107 to provide that a "retailer engaged in business in this state" includes a retailer that (1) holds a substantial ownership in, or is owned in whole or substantial part by, a person who maintains a business location in this state if the retailer sells substantially the same product line and does so under substantially the same business name as the related retailer or if the facilities or employees of the related person in this state are used to advertise, promote, or facilitate sales by the retailer or are used to maintain a marketplace in this state for the retailer, including

exchanging returned merchandise; or (2) holds a substantial ownership in, or is owned in whole or substantial part by, a person that maintains a distribution center, warehouse, or similar location in this state that delivers property sold by the retailer.

Substantial ownership interest is an interest of at least 50 percent, directly or indirectly, in the voting stock, capital, profit, beneficial interest or membership of the entity. Indirect ownership includes through a parent, subsidiary, or affiliate.

The bill would take effect January 1, 2012.

### **Methodology**

Currently, a few retailers with stores or other facilities in the state are organized into separate subsidiaries or affiliates for online retailing versus in-store business or other activity in facilitation of sales and assert that the online subsidiaries lack nexus with the state. These businesses do not collect and remit tax on online sales into Texas. While the Comptroller contends that the online units do have nexus under current law, the issue remains contested. If the issue remains unresolved and these sellers continue to decline to collect and remit tax on their online sales into Texas, it is to be expected that other retailers with stores in the state will separate their online operations into separate subsidiaries and cease collecting and remitting tax on their online sales.

The provisions of this bill remove any ambiguity in current law regarding nexus of online subsidiaries or affiliates of retailers with nexus. The estimate below reflects modestly higher tax collections expected if tax base erosion is stemmed in part by precluding assertions of lack of nexus for online subsidiaries or affiliates of retailers with business locations in the state.

### **Local Government Impact**

There would be a proportional gain of sales and use tax revenue to local taxing jurisdictions.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, KK