

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 28, 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 a retailer engaged in business in this state.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2403, As Introduced: 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</i> 1	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 further 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: utilizes a website on a server in this state from which digital goods are sold or delivered; is in substantial common ownership with a person who maintains a place of business 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 used to maintain a marketplace in this state for the retailer including exchanging returned merchandise; or is in substantial common

ownership with 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 a beneficial interest of at least 50 percent, directly or indirectly, in the voting stock, capital, profit, 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 in the state are organized into separate subsidiaries or affiliates for online and in-store business 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, SD