

- SUBJECT:** Collecting tax on the sale of items through a marketplace
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 10 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy, Noble, Sanford, Shaheen, Wray
- 0 nays
- 1 absent — E. Rodriguez
- WITNESSES:** For — Casey Mock, Amazon; John Kroll, Avenu Insights; Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: Carrie Simmons, Best Buy; Dick Lavine, Center for Public Policy Priorities; David Glenn, Home Builders Association of Greater Austin; Dana Chiodo, International Council of Shopping Centers; Michael Warner, Texas Affiliation of Affordable Housing Providers; James Hines, Texas Association of Business; Jim Sheer, Texas Retailers Association; Brian Yarbrough, The Home Depot; Daniel Morales, Walmart)
- Against — None
- On — Karey Barton, Comptroller of Public Accounts
- BACKGROUND:** Tax Code ch. 151 regulates the collection, administration, and enforcement of the state sales and use tax. Under statute, sellers and retailers must impose a tax on items sold, keep certain tax records, and remit taxes to the comptroller. The state sales and use tax rate is 6.25 percent.
- In *South Dakota v. Wayfair, Inc.*, the U.S. Supreme Court decided a state may require certain sellers who are not physically located in that state to collect sales and use tax for that state. As a result, the comptroller may now require remote sellers to collect state and local taxes.
- Some have suggested that the Legislature should clarify the rights and

duties of individuals who sell items through an online marketplace with regard to state tax collection.

DIGEST:

CSHB 1525 would require a marketplace provider to collect taxes statutorily imposed on the sale of taxable items made through the marketplace.

A marketplace provider would be a person who owned or operated a marketplace, defined as a physical or electronic medium through which other individuals made sales of taxable items. A store, website, software application, or catalogue would be considered a marketplace. A marketplace provider would have the rights and duties of a seller or retailer with respect to sales made through the marketplace.

The bill would require a marketplace provider to certify to each individual selling taxable items through the marketplace, or marketplace seller, that the provider assumed the statutory rights and duties of a seller or retailer. The provider would have to collect, report and remit to the comptroller taxes imposed on all sales of taxable items made through the marketplace.

A marketplace seller who in good faith accepted a provider's certification would exclude sales made through the marketplace from the seller's report. The seller would have to retain records for all marketplace sales and furnish to the marketplace provider information required to correctly collect and remit sales and use taxes.

The bill would not make a marketplace provider liable for failure to collect and remit the correct amount of sales and use taxes if the provider demonstrated that the failure resulted from the provider's good faith reliance on incorrect or insufficient information provided by the seller. The marketplace seller would be liable for a resulting deficiency.

A marketplace provider and marketplace seller that were affiliates or associates would be jointly and severally liable for a deficiency resulting from a sale made through the marketplace.

The bill would not affect the tax liability of the purchaser of a taxable item.

The bill would prohibit a court from certifying an action brought against a marketplace provider concerning the collection and remittance of sales and use tax as a class action.

The comptroller could adopt rules to implement the collection and remittance of sales and use taxes from marketplace providers and could exempt certain small marketplace providers from some or all requirements.

The sale of a taxable item made through a marketplace would be consummated at the location in the state to which the item was shipped, delivered, or otherwise taken possession of by the purchaser.

The bill would take effect October 1, 2019, and would not affect tax liability accruing before that date.

NOTES:

According to the Legislative Budget Board, CSHB 1525 would increase general revenue related funds by \$550 million through fiscal 2020-21.