

Sales/Use:

Texas Comptroller Says it Won't Enforce Some Rule Changes Involving Local Tax Sourcing

Local Sales and Use Tax Rule Changes, Tex. Comptroller (9/21). The Texas Comptroller of Public Accounts (Comptroller) states that it will *not* enforce some provisions of its local sales and use tax sourcing rule [see *Title 34 Tex. Admin. Code section 3.334* ("Rule 3.334") for more details on this rule] that came into effect on October 1, 2021, due to ongoing litigation challenging their validity. The Comptroller explains that while Rule 3.334 generally came into effect on May 31, 2020, it delayed implementing two provisions within it so that effective October 1, 2021, local tax sourcing in Texas changes as follows:

URL: <https://comptroller.texas.gov/taxes/sales/local-tax-rule-changes.php>

URL:
[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=3&rl=334](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=3&rl=334)

- An order received by a salesperson while traveling will be treated as being received at the location from which the salesperson operates if the location independently meets the definition of a place of business; and
- An order not received by a salesperson, such as an order received by a shopping website or shopping application, is received at a location that is not a place of business of the seller.

However, referencing ongoing litigation regarding Rule 3.334, the Comptroller explains that "pursuant to an agreed temporary injunction, the agency has agreed *not* to enforce the second of these provisions while its validity is being challenged in district court." The Comptroller also states that the temporary injunction does *not* change the effective date of this provision and that "if the courts ultimately determine that the rule follows the statute, taxpayers as well as the agency will be bound by that determination."

According to the Comptroller, Rule 3.334 generally:

1. Implements several provisions related to local tax collection by remote sellers and marketplace providers;
2. Clarifies the definition of a place of business; and
3. Clarifies that sales personnel must be present for a location to be considered a "place of business," and that a place of business does not include a computer server, internet protocol (IP) address, domain name, website or software application.

Please contact us with any questions.

— Robin Robinson (Austin)
Senior Manager
Deloitte Tax LLP
rorobinson@deloitte.com

Chris Blackwell (Austin)
Senior Manager
Deloitte Tax LLP
cblackwell@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.