

Sales/Use/Indirect:

Texas Comptroller Proposes Local Tax Siting Rule Changes After Judge Said it Failed to Follow Procedure

Proposed Amended Title 34 Tex. Admin. Code section 3.334, Tex. Comptroller of Public Accounts (9/23/22). Subsequent to a district court judge issuing a letter stating that the Texas Comptroller of Public Accounts (Comptroller) failed to substantially comply with one or more of the procedural requirements of section 2001.024 of the Texas Government Code in adopting amendments to 34 TAC § 3.334(b)(5) [see *State Tax Matters*, Issue 2022-33, for more details on this letter], the Comptroller now proposes to revise Title 34 Tex. Admin. Code section 3.334(b)(5) and other portions of the rule “with an explanation that augments the explanation in the notice of proposed rulemaking published in the January 3, 2020, issue of the Texas Register (45 TexReg 98) and the order adopting amendments to §3.334 published in the May 22, 2020, issue of the Texas Register (45 TexReg 3499).” The amendments involve siting of local sales and use tax on certain remote/online sales where orders are *not* received by a salesperson.

URL: <https://www.sos.state.tx.us/texreg/pdf/backview/0923/0923is.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/STM/220819_5.html

According to the Comptroller, while “it has been alleged that the proposed rule would result in a wholesale policy change from origin sourcing to destination sourcing for website orders,” the proposed amendments merely are an articulation of preexisting Comptroller interpretations of “place of business of the retailer” as defined by the legislature and such interpretation “does not mean that every website sale is sourced to destination, since some will be sourced to the place of business of the seller where the order is fulfilled.” Furthermore, while “it has also been alleged that the proposed subsection (b)(5) will change the way that Texas retailers with one place of business in Texas will source local tax,” the Comptroller states that, in most instances, subsection (b)(5) will *not* change the way that such Texas retailers source local tax. A public hearing on this proposal is scheduled for October 17, 2022, and comments must be received no later than 30 days from the September 23, 2022 publication date in the Texas Register. Please contact us with any questions.

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