



Legislative UPDATE

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Comptroller Adopts New Sales Tax Rules: Internet Sales Tax Sourcing Change Effective October 1, 2021

Last week, the comptroller gave final approval to amendments to Rule 3.334, which make several modifications to local sales and use tax rules. The changes are based, in part, on 2019 legislation that addresses remote sellers. The new rule, along with the comptroller's summary of comments received by interested parties and differences between the proposal and the adopted rule, is available [here](#).

The most significant change is that the adopted rules relating to orders not received by sales personnel are not effective until October 1, 2021. The comptroller, according to the description published in the *Texas Register*, delayed the implementation of this provision in order to give "interested parties an opportunity to seek a legislative change." City officials can expect this to be a major issue during the 2021 legislative session.

The changes made to sourcing of internet orders caused what could be described as a flood of opinions from city officials and state legislators alike, on both sides of the issue. Many city officials expressed their strong opposition to the rule changes, both in written comments and during public hearings on the proposal. Those cities objected primarily on the grounds that the change would deprive them of sales tax revenue that they rely on under the existing sourcing scheme. Other city officials supported the rule changes. Those cities viewed the existing framework as re-routing sales tax dollars as e-commerce continues to proliferate.

The comptroller’s adopted rule doesn’t deviate much in substance from the proposal that was so hotly debated earlier in the year, with the exception of some changes to the terminology used. Instead of expressly addressing “internet orders,” as the proposal did, the adopted rule refers to “orders not received by sales personnel, including orders received by a shopping website or shopping software application.”

The adopted rule provides that orders received via a shopping website or software application are received at a location that is not a place of business in the state. The ultimate impact of this change is that, under the provisions governing where a sale is consummated, certain internet purchases may change from being sourced to the location where the order was deemed to have been received. The new rule provides that orders are sourced to the location where the order is fulfilled or the location where the order is received by the purchaser, depending on the exact circumstances. By comparison, nothing in the rule changes the sourcing of orders placed in person in Texas; in-person orders at a place of business in Texas are consummated at the place of business, regardless of where the order is fulfilled.

In addition to the new provision on “orders not received by sales personnel,” the rule adds a new paragraph dealing with “orders received by sales personnel...including orders received by mail, telephone, including voice over internet protocol and cellular phone calls, facsimile, and email.” This section provides some clarification for cities with concerns about traveling salespersons and the treatment of orders received via email or voice over internet protocol, but not using an internet shopping website. The location where a salesperson operates will be considered a “place of business” of the seller, for sales tax allocation purposes, only if the location meets the definition of that term on its own, without regard to the orders imputed to that location under this new paragraph.

One underlying issue relates to some cities’ use of Chapter 380 economic development agreements to rebate sales taxes to business prospects in exchange for the business establishing customer service centers in those cities to process internet orders. Doing so provides direct sales taxes from those internet purchases to the city granting the incentive. The originally-proposed rule would have expressly grandfathered that type of agreement until December 31, 2022. The adopted rules do not. However, because the new sourcing provisions for internet orders won’t go into effect until October 1, 2021, a city will need to evaluate any Chapter 380 agreement rebating sales taxes prior to that point to determine how the rule change will affect it. That is, assuming the legislature doesn’t directly address the issue in the 2021 legislative session.

TWDB Solicits Regional Flood Planning Volunteers

On April 9, 2020, the Texas Water Development Board [created fifteen flood plain regions](#) as required by [S.B. 8](#) (2019). Now the TWDB is soliciting applications for members of the flood planning groups for each region, including those from cities and water utilities.

Applications are due by July 2, 2020. For more information regarding this solicitation and for submission instructions, please review the [regional flood planning group member solicitation document](#) and use the [online member nomination form](#).

According to the TWDB, ideal candidates “will have experience in and a continued strong interest in working cooperatively on public issues; be committed to and possess expertise in flood risk-related issues; be strongly affiliated with and endorsed by the interest category for which they are nominated; and be capable of playing a leadership role in a regional flood planning group.”

In addition to nominations for group members, the TWDB is seeking political subdivisions to apply to provide support by serving as the designated planning group sponsor and/or provide free public meeting spaces for the planning groups and attending public to use regularly.

Each regional flood planning group will be responsible for designating a sponsor to apply for and receive financial assistance from the TWDB to develop or revise a regional flood plan. Interested cities should review the [regional flood planning group support solicitation document](#) and use the [online regional flood planning group support interest submission form](#). The deadline for the application to be a sponsor is also July 2, 2020.

2020 City Tax and Budget Deadline Memos Now Available

Every year, TML posts a memo containing the annual calendar deadlines for the budget adoption and tax rate setting process. Following the passage of Senate Bill 2 in 2019, the process for 2020 has changed significantly.

Because the tax rate adoption procedure now varies depending on the size of the city, two memos are available this year: one for [cities under 30,000 population](#), and the other for [cities with 30,000 population or more](#). Further, within each document, there are two sets of deadlines depending on whether the city’s adopted tax rate will exceed the voter-approval tax rate or not.

Whatever the case may be, the deadlines in the document represent the last possible dates for a city to take certain actions related to the budget or tax rate in 2020. Cities should act well in advance of the deadlines in the calendar, if possible.

For more detailed information about S.B. 2, city officials are encouraged to read the [S.B. 2 Explanatory Q&A](#) posted on the TML website. Those with questions about S.B. 2 or the budget and tax rate setting process can purchase a [previously-recorded webinar](#) on the bill and are encouraged to contact Bill Longley, TML Legislative Counsel, at bill@tml.org.

Coronavirus (COVID-19) Updates

The Texas Municipal League is open for business. The building is closed to all but essential personnel and most staff is working remotely, but the League remains open for business and is

fully ready to serve. Cities are encouraged to call or email for legal assistance, help with ordinances, or for general advice or assistance. Let us know how we can assist you and your city.

Call TML staff at 512-231-7400, or email Scott Houston for legal assistance at SHouston@tml.org; Rachael Pitts for membership support at RPitts@tml.org; and the training team for questions about conferences and workshops at training@tml.org.

The League has prepared a coronavirus clearinghouse [web page](#) to keep cities updated. In addition, everyone who receives the *Legislative Update* should receive a daily email update each afternoon with information on new developments. The daily email updates will be our primary means of communication during the pandemic. Those emails are being archived [chronologically](#) as well as by [subject matter](#).

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