



September 23, 2022
Number 38

Comptroller Proposes Revised Local Sales Tax Sourcing Rule for Internet Orders; Public Hearing on October 17

[Previously reported](#) in the *Legislative Update* last month, a district court judge sided with six cities who challenged the sales tax sourcing rule on internet orders adopted by the comptroller in 2020. In a [letter ruling](#), the judge found that the comptroller’s office failed to comply with proper administrative procedure in adopting 34 Texas Administrative Code Sec. 3.334(b)(5).

In response to that ruling, the comptroller has re-proposed changes to Sec. 3.334. The entire rule proposal, including background information, can be found [here](#). Of primary interest, Sec. 3.334(b)(5) is revised to read as follows:

“(5) An order that is not received by a salesperson is received at a location that is not a place of business of the seller. Examples are orders received by a computer server through a shopping cart software program and orders received by an automated telephone ordering system.”

Although not identical to the previously proposed language, the newly proposed Sec. 3.334(b)(5) likely doesn't represent a major practical difference from the previous language that is subject to the legal challenge. Under this proposal, just as the last, local sales taxes on orders not received by salespersons are sourced to the location where the order is fulfilled or the delivery location, depending on the exact circumstances.

The revised rule includes additional changes beyond the relevant language on orders not received by salespersons. Among these changes are modifications to the definition of "place of business of the seller" along with clarifying language providing that forwarding previously received orders to a distribution center, warehouse, or similar facility for fulfillment does not make the facility a place of business for sales tax sourcing purposes.

The comptroller will hold a public hearing on **Monday, October 17, 2022** to receive comments on the revised rules. The hearing will take place at 9:00 a.m. in Room 170 of the Stephen F. Austin Building, 1700 Congress Ave., Austin, Texas 78701. Interested city officials may sign up to testify beginning at 8:30 a.m. on the day of the hearing, and testimony will be heard on a first come, first served basis. Everyone wishing to testify will have ten minutes to present their testimony and are required to also provide their testimony in writing prior to their oral testimony.

In addition, interested city officials may submit comments to Jennifer Bureson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: tp.rule.comments@cpa.texas.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*, which means the comment deadline falls on Sunday, October 23, 2022.

Resolutions Submitted for Consideration at 2022 Annual Conference and Your City Delegate

Several cities submitted legislative resolutions for consideration at the 2022 TML Annual Conference in San Antonio. The topics relate, among other things, to:

1. Policy Summit Report
2. Ballot Propositions
3. Hotel Occupancy Taxes
4. Zoning/Super Majority Requirements
5. Municipal Utility Districts
6. Competitive Procurement
7. Emergency Service Districts
8. Affordable Housing

The full resolutions packet can be found [here](#). The resolutions will be debated at the TML business meeting on October 6 at 3:30 p.m. Additional resolutions relating to member service fees and meeting procedures under the TML Constitution may be added to the packet after a Tuesday TML Board meeting at the Conference.

Each city is entitled to one voting delegate at the business meeting. The delegate isn't required to have any expertise, and an elected official delegate is encouraged but not required. The delegate can sign up electronically [here](#) prior to the meeting or sign up in person at a table outside of the meeting room. Cities are encouraged to sign up their delegate early using the link above.

All city officials are welcome to attend the meeting, whether or not they are a voting delegate.

Federal Infrastructure Bill Update

In November 2021, the federal Infrastructure Investment and Jobs Act (IIJA) was signed into law. The IIJA is altogether a \$1.2 trillion bill that will invest in the nation's core infrastructure priorities including roads, bridges, rail, transit, airports, ports, energy transmission, water systems, and broadband.

The League will monitor state and federal agencies and work with the National League of Cities (NLC) to access the latest information relating to the IIJA. We will be providing periodic updates in the Legislative Update on resources for Texas cities on how to access IIJA funding for local infrastructure projects.

U.S. Department of Homeland Security (DHS)

Last week, DHS [announced](#) the availability of \$185 million for the State and Local Cybersecurity Grant Program for Fiscal Year 2022 to support state and local efforts to address cyber risk to their information systems. This round of funding is part of a total of \$1 billion in funding under the IIJA over the next four years. The program specifically is designed to “fund efforts to establish critical governance frameworks across states and territories to address cyber threats and vulnerabilities, identify key vulnerabilities and evaluate needed capabilities, implement measures to mitigate the threats, and develop a 21st-century cyber workforce across local communities.”

The current round of funding is only for states and territories, not cities. However, cities will receive sub-awards through the states. The IIJA requires states to distribute at least 80% of the funds to local governments, with a minimum of 25% of the allocated funds distributed to rural areas.

The deadline for applications for this round of funding is November 15. More information on the program, including access to the Notice of Funding Availability, can be found [here](#).

National League of Cities (NLC)

The Local Infrastructure Hub, sponsored by NLC and the U.S. Conference of Mayors, among others, is now live. The Hub is designed to help city officials navigate the funding programs made available by the IIJA. Interested city officials can sign up for the mailing list, attend virtual learning events, and access articles and other resources on some of the key IIJA funding opportunities.

[Upcoming events](#) on the Local Infrastructure Hub include:

- September 27, 2022 – Delivering Results: Building Resilient Infrastructure and Communities

House and Senate Committee Interim Hearings

The Texas House and Senate Committees are underway studying interim charges outlined by Speaker Phelan and Lt. Governor Dan Patrick.

Below is a full list of committee hearings set to hear certain city-related charges. All hearings will be held at the Texas Capitol unless otherwise indicated. If a committee has newly posted notice and was not included in last week’s edition of the *Legislative Update*, it is indicated as such.

House Committee on Transportation

The committee will meet on Thursday, October 6 at 9:00 a.m. in Corpus Christi to hear the following joint interim charge:

Study the impacts that increased federal funding, formula changes, and new programs authorized in the Infrastructure Investment and Jobs Act will have on state transportation projects. Evaluate strategies to ensure Texas communities can maximize receipt of federal grant funds.

Information on the hearing, including how to submit electronic comment, can be found [here](#).

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.