

Sales/Use/Indirect:

Texas Comptroller of Public Accounts Re-Proposes Changes to Local Tax *Situsing* Rule

Proposed Amended Title 34 Tex. Admin. Code section 3.334, Tex. Comptroller of Public Accounts (4/19/24). For underlying procedural and some substantive tax-related reasons (including those involving certain small businesses), the Texas Comptroller of Public Accounts (Comptroller) is proposing to repeal its recently adopted local tax *situsing* rule regarding the location where an order is received [see *State Tax Matters*, Issue 2024-2, for details on this recent rule adoption], and simultaneously proposing to readopt the text of the rule with some amendments, so that such repeal would be effective the date the new version of the rule takes effect. The proposal revises Title 34 Tex. Admin. Code section 3.334, and continues to add “subsection (c)(7)” regarding the location where an order is received as follows:

URL: <https://www.sos.state.tx.us/texreg/pdf/backview/0419/0419is.pdf>

URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240112_11.html

“The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller.”

According to Comptroller, the repeal of the existing rule and adoption of the proposed new rule “will expand the local tax collection obligations of remote sellers” – essentially by requiring out-of-state sellers that collect state use tax to also collect applicable local sales tax. Litigation that may impact these changes remains pending. The Comptroller has scheduled a hearing for May 9, 2024 to take public comments on these proposed rule changes; any written comments are due 30 days from the April 19, 2024 publication date in the Texas Register. Please contact us with any questions.

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