ROUND ROCK CHAMBER

Position Statement in Opposition to the Texas Comptroller's Proposed Rule on State and Local Sales and Use Taxes (34 TAC §3.334)

Adopted by the Round Rock Chamber Board of Directors on January 23, 2020

Position Statement: The Round Rock Chamber opposes the Texas Comptroller's proposed rule on State and Local Sales and Use Taxes (34 TAC §3.334) as published in the Texas Register on January 3, 2020. The proposed rules go beyond the scope of the Wayfair decision, House Bill 1525 (86th Texas Legislature) and House Bill 2153 (86th Texas Legislature).

Specifically, we oppose the provision that changes local sales tax sourcing from being *origin*-based to *destination*-based for internet transactions. In addition, we oppose the proposed language that severely limits sales tax rebates under Chapter 380 of the Texas Local Government Code. While the proposed rule allows a temporary grace period for existing agreements through December 31, 2022, the bottom line is that the proposed language places a restriction on a critical economic development tool and as a result will hurt our ability to maintain our competitive edge in developing existing businesses and in attracting new business and projects to the Round Rock community.
We ask that the Texas Comptroller move forward with only the language that is needed to implement new state law.

Background:

- In the January 3, 2020 issue of the Texas Register, the Texas Comptroller published proposed rules to amend the Texas Administrative Code (34 TAC §3.334) in order to implement a recent U.S. Supreme Court decision and two new state laws:
  - South Dakota v. Wayfair, Inc., a June 2018 U.S. Supreme Court ruling finding "that states can mandate that businesses without a physical presence in a state with more than 200 transactions or $100,000 in-state sales collect and remit sales taxes on transactions in the state." The ruling pertains to interstate—not intrastate—internet sales. (Federal Legislative Update on Post-Wayfair, AICPA, 2019))
  - House Bill 1525 (86th Texas Legislature) by Rep. Burrows, *regarding collecting tax on the sale of items through a market place*.
  - House Bill 2153 (86th Texas Legislature) by Rep. Burrows, regarding creating a single local use tax rate as an alternative for remote sellers.

- Unfortunately, the Comptroller's proposed rule goes beyond the regulatory implementation of the Wayfair decision and the new state law.

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- We are particularly concerned about sections (c)(6)(A) and (c)(6)(D) in the proposed rule concerning orders received over the internet.

- The proposed rule changes local sales tax sourcing from being *origin*-based to *destination*-based for internet transactions. In addition, the proposed language severely limits sales tax rebates under Chapter 380 of the Texas Local Government Code.

  - Per the City of Round Rock, this change will reduce the city's net revenues from sales tax by 25% or $20 million (the equivalent to 13.3 cents of property tax rate revenues). They also note that a portion of the reduction would also result in a substantial decrease in the available revenues for road and economic development needs via the city's Type B fund. (City of Round Rock, 2019)

- As an example of how this change will impact our communities, consider the fact that the City of Round Rock currently collects sales tax for all internet sales made by Dell Technologies in Round Rock and delivered to customers throughout the state of Texas. Of the $29 million dollars that is collected annually, and per the city's longstanding *380 agreement* with Dell Technologies, the city rebates $9 million per year to Dell Technologies for further investment in their global operation, while the city invests $20 million in our community and in the services that are provided to its citizens. If the proposed language is adopted as is, the $29 million dollars will be redirected and distributed to cities across the state pending the location of Dell Technologies' Texas customers.

- There will be significant financial implications for local governments. With 35 years remaining in the City of Round Rock's 380 agreement with Dell Technologies, the net present value is estimated to be $350 million for Dell Technologies and $750 million for the city. The loss of this revenue will be detrimental to the City of Round Rock and may be a deterrent to any future expansion of Dell Technologies in Round Rock and/or the global company maintaining its headquarters in Round Rock.

- Dell's Round Rock presence is significant with over 2 million square feet of Class A office space and 12,000 employees and should be considered a place of business, regardless of the communication method used to receive their customer orders.

- The Round Rock Chamber is extremely concerned about the negative outcomes that will result from implementing the proposed rule as written.

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- With the severely restricted 380 agreements, we will lose our competitive edge when working to develop our community through business retention, business expansion, and business attraction.
- Texas has a reputation for being good, stable for business; for 7 years straight Texas has won the Governor's Cup for Economic Development. The proposed rule, if implemented, will tarnish our reputation. The state will be seen as being unpredictable for business.
- The proposed change will result in a significant loss of revenue to the largest employer in Round Rock and the City of Round Rock.
- The significant loss of revenue to the city will result in the loss and/or reduction of city services and/or higher property taxes to offset the loss in revenue.

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