AN ACT

relating to the imposition of the franchise tax and local sales and
use taxes, including the authority of a county or other local
governmental entity to receive local sales tax information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (c), Section 151.027, Tax Code, is
amended to read as follows:

(c) This section does not prohibit:

(1) the examination of information, if authorized by
the comptroller, by another state officer or law enforcement
officer, by a tax official of another state, by a tax official of
the United Mexican States, or by an official of the United States if
a reciprocal agreement exists;

(2) the delivery to a taxpayer, or a taxpayer's
authorized representative, of a copy of a report or other paper
filed by the taxpayer under this chapter;

(3) the publication of statistics classified to
prevent the identification of a particular report or items in a
particular report;

(4) the use of records, reports, or information
secured, derived, or obtained by the attorney general or the
comptroller in an action under this chapter against the same
taxpayer who furnished the information;

(5) the delivery to a successor, receiver, executor,
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1 administrator, assignee, or guarantor of a taxpayer of information
2 about items included in the measure and amounts of any unpaid tax or
3 amounts of tax, penalties, and interest required to be collected;
4 (6) the delivery of information to a municipality,
5 county, or other local governmental entity [an eligible
6 municipality] in accordance with Section 321.3022, 322.2022, or
7 323.3022; or
8 (7) the release of information in or derived from a
9 record, report, or other instrument required to be furnished under
10 this chapter by a governmental body, as that term is defined in
11 Section 552.003, Government Code.
12
13 SECTION 2. Subchapter C, Chapter 151, Tax Code, is amended
14 by adding Section 151.0565 to read as follows:
15
16 Sec. 151.0565. TAXABLE ITEMS SOLD OR PROVIDED UNDER
17 DESTINATION MANAGEMENT SERVICES CONTRACTS. (a) In this section:
18 (1) "Destination management services" means the
19 following services when provided under a qualified destination
20 management services contract:
21
22 (A) transportation management;
23 (B) booking and managing entertainers;
24 (C) coordination of tours or recreational
25 activities;
26 (D) meeting, conference, or event registration;
27 (E) meeting, conference, or event staffing;
28 (F) event management; and
29 (G) meal coordination.
30 (2) "Qualified destination management company" means
a business entity that:

(A) is incorporated or is a limited liability company;

(B) receives at least 80 percent of the entity's annual total revenue from providing or arranging for the provision of destination management services;

(C) maintains a permanent nonresidential office from which the destination management services are provided or arranged;

(D) has at least three full-time employees;

(E) spends at least one percent of the entity's annual gross receipts to market the destinations with respect to which destination management services are provided;

(F) has at least 80 percent of the entity's clients described by Subdivision (3)(A) located outside this state;

(G) other than office equipment used in the conduct of the entity's business, does not own equipment used to directly provide destination management services, including motor coaches, limousines, sedans, dance floors, decorative props, lighting, podiums, sound or video equipment, or equipment for catered meals;

(H) is not doing business as a caterer;

(I) does not provide services for weddings;

(J) does not own a venue at which events or activities for which destination management services are provided occur; and

(K) is not a subsidiary of another entity that,
and is not a member of an affiliated group, as that term is defined
by Section 171.0001, another member of which:

(i) is doing business as, or owns or
operates another entity doing business as, a caterer; or

(ii) owns or operates a venue described by
Paragraph (J).

(3) "Qualified destination management services
contract" means a contract under which at least three of the
destination management services listed in Subdivision (1) are
provided:

(A) in this state to a client that is not an
individual and that:

(i) is a corporation, partnership, limited
liability company, trade association, or other business entity,
other than a social club or fraternal organization;

(ii) has its principal place of business
outside the county where the destination management services are to
be provided; and

(iii) agrees to pay the qualified
destination management company for all destination management
services provided to the client under the terms of the contract; and

(B) by a qualified destination management
company that pays or accrues liability for the payment of taxes
imposed by this chapter on purchases of taxable items that will be
consumed or used by the company in performing the contract.

(b) A qualified destination management company is the
consumer of taxable items sold or otherwise provided under a
qualified destination management services contract, and the
destination management services provided under the contract are not
considered taxable services, as that term is defined by Section
151.0101.

SECTION 3. (a) Section 171.1011, Tax Code, is amended by
adding Subsection (g-6) to read as follows:
(g-6) A taxable entity that is a qualified destination
management company as defined by Section 151.0565 shall exclude
from its total revenue, to the extent included under Subsection
(c)(1)(A), (c)(2)(A), or (c)(3), payments made to other persons to
provide services, labor, or materials in connection with the
provision of destination management services as defined by Section
151.0565.

(b) This section applies only to a report originally due on
or after the effective date of this section.

(c) Notwithstanding any other provision of this Act, this
section takes effect January 1, 2010.

SECTION 4. Subdivision (3), Subsection (a), Section
321.002, Tax Code, is amended to read as follows:

(3) "Place of business of the retailer" means an
established outlet, office, or location operated by the retailer or
the retailer's agent or employee for the purpose of receiving
orders for taxable items and includes any location at which three or
more orders are received by the retailer during a calendar year. A
warehouse, storage yard, or manufacturing plant is not a "place of
business of the retailer" unless at least three orders are received
by the retailer during the calendar year at the warehouse, storage
yard, or manufacturing plant. An outlet, office, facility, or
location that contracts with a retail or commercial business
engaged in activities to which this chapter applies to process for
that business invoices or bills of lading onto which sales tax is
added is not a "place of business of the retailer" if the
comptroller determines that the outlet, office, facility, or
location functions or exists to avoid the tax imposed by this
chapter or to rebate a portion of the tax imposed by this chapter to
the contracting business. Notwithstanding any other provision of
this subdivision, a kiosk is not a "place of business of the
retailer." In this subdivision, "kiosk" means a small stand-alone
area or structure that:

(A) is used solely to display merchandise or to
submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is
a place of business of another retailer, such as a department store
or shopping mall; and

(C) at which taxable items are not available for
immediate delivery to a customer.

SECTION 5. Section 321.203, Tax Code, is amended by
amending Subsections (c) and (d) and adding Subsections (c-1),
(c-2), and (c-3) to read as follows:

(c) If a retailer has more than one place of business in this
state, each [a] sale of each [a] taxable item by the retailer is
consummated at the [retailer's] place of business of the retailer
in this state where the retailer first receives the order, provided
that the order is placed in person by the purchaser or lessee of the
taxable item at the place of business of the retailer in this state where the retailer first receives the order.

(c-1) If the retailer has more than one place of business in this state and Subsection (c) does not apply, the sale is consummated at the place of business of the retailer in this state:

(1) from which the retailer ships or delivers the item, if the retailer ships or delivers the item to a point designated by the purchaser or lessee; or

(2) where the purchaser or lessee takes possession of and removes the item, if the purchaser or lessee takes possession of and removes the item from a place of business of the retailer.

(c-2) Subsection (c) does not apply if:

(1) the taxable item is shipped or delivered from a warehouse:

(A) that is a place of business of the retailer;

(B) in relation to which the retailer has an economic development agreement with:

(i) the municipality in which the warehouse is located that was entered into under Chapter 380, 504, or 505, Local Government Code, or a predecessor statute, before January 1, 2009; or

(ii) the county in which the warehouse is located that was entered into under Chapter 381, Local Government Code, before January 1, 2009; and

(C) in relation to which the municipality provides information relating to the economic development agreement as required by Subsection (c-3) by the deadline
prescribed by that subsection, or, if appropriate, the county
complies with Section 323.203(c-3) by the deadline prescribed by
that section; and

(2) the place of business of the retailer at which the
retailer first receives the order in the manner described by
Subsection (c) is a retail outlet identified in the information
required by Subsection (c-3) or Section 323.203(c-3) as being
served by the warehouse on January 1, 2009.

(c-3) Not later than September 1, 2009, a municipality that
has entered into an economic development agreement described by
Subsection (c-2) shall send to the comptroller information
prescribed by the comptroller relating to the agreement that
identifies each warehouse subject to the agreement and each retail
outlet that, on January 1, 2009, was served by that warehouse. The
comptroller shall prescribe the manner in which the information
must be provided. The provision of information to the comptroller
under this subsection does not affect whether information described
by this subsection is confidential or excepted from required public
disclosure. This subsection and Subsection (c-2) expire September
1, 2014.

(d) If the retailer has more than one place of business in
this state and Subsections (c) and (c-1) do not apply [neither the
possession of a taxable item is taken at nor shipment or delivery of
the item is made from the retailer's place of business in this
state], the sale is consummated at:

(1) the [retailer's] place of business of the retailer
in this state where the order is received; or
(2) if the order is not received at a place of business
of the retailer, the place of business from which the retailer's
agent or employee who took the order operates.

SECTION 6. Section 321.3022, Tax Code, is amended by
amending Subsections (a), (a-1), (b), (d), (e), (f), (g), (h), and
(i) and adding Subsection (a-2) to read as follows:

(a) In this section, "other local governmental entity" has
the meaning assigned by Section 321.107.

(a-1) Except as otherwise provided by this section, the
comptroller on request shall provide to a municipality or other
local governmental entity that has adopted a tax under this
chapter:

(1) information relating to the amount of tax paid to
the municipality or other local governmental entity under this
chapter during the preceding or current calendar year by each
person doing business in the municipality or other local
governmental entity who annually remits to the comptroller state
and local sales tax payments of more than $25,000; and

(2) any other information as provided by this section.

(a-2) The comptroller on request shall provide to a
municipality or other local governmental entity that has adopted a
tax under this chapter and that does not impose an ad valorem tax
information relating to the amount of tax paid to the municipality
or other local governmental entity under this chapter during the
preceding or current calendar year by each person doing business in
the municipality or other local governmental entity who annually
remits to the comptroller state and local sales tax payments of more
(b) The comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the municipality or other local governmental entity, that is part of:

(1) an interlocal agreement;
(2) a tax abatement agreement;
(3) a reinvestment zone;
(4) a tax increment financing district;
(5) a revenue sharing agreement;
(6) an enterprise zone;
(7) a neighborhood empowerment zone;
(8) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(7); or
(9) any area defined by the municipality or other local governmental entity for the purpose of economic forecasting.

(d) If the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter, the comptroller shall refuse to provide the information to the municipality or other local governmental entity unless the comptroller receives permission from each of the persons allowing the comptroller to provide the information to the municipality or other local governmental entity as requested.
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1 (e) A separate request for information under this section
2 must be made in writing by the municipality's mayor or chief
3 administrative officer or by the governing body of the other local
4 governmental entity each year.
5
6 (f) Information received by a municipality or other local
7 governmental entity under this section is confidential, is not open
8 to public inspection, and may be used only for the purpose of
9 economic forecasting, for internal auditing of a tax paid to the
10 municipality or other local governmental entity under this chapter,
11 or for the purpose described in Subsection (g).
12
13 (g) Information received by a municipality or other local
14 governmental entity under Subsection (b) may be used by the
15 municipality or other local governmental entity to assist in
16 determining revenue sharing under a revenue sharing agreement or
17 other similar agreement.
18
19 (h) The comptroller may set and collect from a municipality
20 or other local governmental entity reasonable fees to cover the
21 expense of compiling and providing information under this section.
22
23 (i) Notwithstanding Chapter 551, Government Code, the
24 governing body of a municipality or other local governmental
25 entity is not required to confer with one or more employees or a
26 third party in an open meeting to receive information or question
27 the employees or third party regarding the information received by
28 the municipality or other local governmental entity under this
29 section.
30
31 SECTION 7. Subchapter C, Chapter 322, Tax Code, is amended
32 by adding Section 322.2022 to read as follows:
Sec. 322.2022. TAX INFORMATION. (a) Except as otherwise provided by this section, the comptroller on request shall provide to a taxing entity:

(1) information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in the area included in the entity who annually remits to the comptroller state and local sales tax payments of more than $25,000; and

(2) any other information as provided by this section.

(b) The comptroller on request shall provide to a taxing entity information relating to the amount of tax paid to the entity under this chapter during the preceding or current calendar year by each person doing business in an area included in the entity, as defined by the entity, that is part of:

(1) an interlocal agreement;
(2) a revenue sharing agreement;
(3) any other agreement similar to those listed in Subdivisions (1) and (2); or
(4) any area defined by the entity for the purpose of economic forecasting.

(c) The comptroller shall provide the information under Subsection (b) as an aggregate total for all persons doing business in the defined area without disclosing individual tax payments.

(d) If the request for information under Subsection (b) involves not more than three persons doing business in the defined area who remit taxes under this chapter, the comptroller shall refuse to provide the information to the taxing entity unless the
comptroller receives permission from each of the persons allowing
the comptroller to provide the information to the entity as
requested.

(e) A separate request for information under this section
must be made in writing by the governing body of the taxing entity
each year.

(f) Information received by a taxing entity under this
section is confidential, is not open to public inspection, and may
be used only for the purpose of economic forecasting, for internal
auditing of a tax paid to the entity under this chapter, or for the
purpose described by Subsection (g).

(g) Information received by a taxing entity under
Subsection (b) may be used by the entity to assist in determining
revenue sharing under a revenue sharing agreement or other similar
agreement.

(h) The comptroller may set and collect from a taxing entity
reasonable fees to cover the expense of compiling and providing
information under this section.

(i) Notwithstanding Chapter 551, Government Code, the
governing body of a taxing entity is not required to confer with one
or more employees or a third party in an open meeting to receive
information or question the employees or third party regarding the
information received by the entity under this section.

SECTION 8. Section 323.203, Tax Code, is amended by
amending Subsections (c) and (d) and adding Subsections (c-1),
(c-2), and (c-3) to read as follows:

(c) If a retailer has more than one place of business in this
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1 state, each [a] sale of each [a] taxable item by the retailer is
2 consummated at the [retailer's] place of business of the retailer
3 in this state where the retailer first receives the order, provided
4 that the order is placed in person by the purchaser or lessee of the
5 taxable item at the place of business of the retailer in this state
6 where the retailer first receives the order.
7
8 (c-1) If the retailer has more than one place of business in
9 this state and Subsection (c) does not apply, the sale is
10 consummated at the place of business of the retailer in this state:
11 (1) from which the retailer ships or delivers the
12 item, if the retailer ships or delivers the item to a point
13 designated by the purchaser or lessee; or
14 (2) where the purchaser or lessee takes possession of
15 and removes the item, if the purchaser or lessee takes possession of
16 and removes the item from a place of business of the retailer.
17
18 (c-2) Subsection (c) does not apply if:
19 (1) the taxable item is shipped or delivered from a
20 warehouse:
21 (A) that is a place of business of the retailer;
22 (B) in relation to which the retailer has an
23 economic development agreement with:
24 (i) the county in which the warehouse is
25 located that was entered into under Chapter 381, Local Government
26 Code, before January 1, 2009; or
27 (ii) the municipality in which the
28 warehouse is located that was entered into under Chapter 380, 504,
29 or 505, Local Government Code, or a predecessor statute, before
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January 1, 2009; and

(C) in relation to which the county provides
information relating to the economic development agreement as
required by Subsection (c-3) by the deadline prescribed by that
subsection, or, if appropriate, the municipality complies with
Section 321.203(c-3) by the deadline prescribed by that section;
and

(2) the place of business of the retailer at which the
retailer first receives the order in the manner described by
Subsection (c) is a retail outlet identified in the information
required by Subsection (c-3) or Section 321.203(c-3) as being
served by the warehouse on January 1, 2009.

(c-3) Not later than September 1, 2009, a county that has
entered into an economic development agreement described by
Subsection (c-2) shall send to the comptroller information
prescribed by the comptroller relating to the agreement that
identifies each warehouse subject to the agreement and each retail
outlet that, on January 1, 2009, was served by that warehouse. The
comptroller shall prescribe the manner in which the information
must be provided. The provision of information to the comptroller
under this subsection does not affect whether information described
by this subsection is confidential or excepted from required public
disclosure. This subsection and Subsection (c-2) expire September
1, 2014.

(d) If the retailer has more than one place of business in
this state and Subsections (c) and (c-1) do not apply [neither the
possession of a taxable item is taken at nor shipment or delivery of
the item is made from the retailer's place of business in this state, the sale is consummated at:

(1) the [retailer's] place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates.

SECTION 9. Subchapter D, Chapter 323, Tax Code, is amended by adding Section 323.3022 to read as follows:

Sec. 323.3022. TAX INFORMATION. (a) In this section, "other local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, that has a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax the imposition, computation, administration, enforcement, and collection of which is governed by this chapter.

(b) Except as otherwise provided by this section, the comptroller on request shall provide to a county or other local governmental entity that has adopted a tax under this chapter:

(1) information relating to the amount of tax paid to the county or other local governmental entity under this chapter during the preceding or current calendar year by each person doing business in the county or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than $25,000; and

(2) any other information as provided by this section.

(c) The comptroller on request shall provide to a county or
other local governmental entity that has adopted a tax under this
chapter information relating to the amount of tax paid to the county
or other local governmental entity under this chapter during the
preceding or current calendar year by each person doing business in
an area, as defined by the county or other local governmental
entity, that is part of:

(1) an interlocal agreement;
(2) a tax abatement agreement;
(3) a reinvestment zone;
(4) a tax increment financing district;
(5) a revenue sharing agreement;
(6) an enterprise zone;
(7) any other agreement, zone, or district similar to
those listed in Subdivisions (1)-(6); or

(8) any area defined by the county or other local
governmental entity for the purpose of economic forecasting.

(d) The comptroller shall provide the information under
Subsection (c) as an aggregate total for all persons doing business
in the defined area without disclosing individual tax payments.

(e) If the request for information under Subsection (c)
involves not more than three persons doing business in the defined
area who remit taxes under this chapter, the comptroller shall
refuse to provide the information to the county or other local
governmental entity unless the comptroller receives permission
from each of the persons allowing the comptroller to provide the
information to the county or other local governmental entity as
requested.
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(f) A separate request for information under this section must be made in writing each year by the county judge or the governing body of the other local governmental entity.

(g) Information received by a county or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the county or other local governmental entity under this chapter, or for the purpose described by Subsection (h).

(h) Information received by a county or other local governmental entity under Subsection (c) may be used by the county or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

(i) The comptroller may set and collect from a county or other local governmental entity reasonable fees to cover the expense of compiling and providing information under this section.

(iii) Notwithstanding Chapter 551, Government Code, the commissioners court of a county or the governing body of the other local governmental entity is not required to confer with one or more employees or a third party in an open meeting to receive information or question the employees or third party regarding the information received by the county or other local governmental entity under this section.

SECTION 10. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been
enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 11. Sections 321.203 and 323.203, Tax Code, as amended by this Act, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 321.203 and 323.203, Tax Code, as amended by this Act, take effect August 31, 2009.

SECTION 12. Except as otherwise provided by this Act, this Act takes effect September 1, 2009.
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David Dewhurst
President of the Senate

I hereby certify that S.B. No. 636 passed the Senate on April 21, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on June 1, 2009, by the following vote: Yeas 31, Nays 0.

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 636 passed the House, with amendments, on May 25, 2009, by the following vote: Yeas 143, Nays 0, one present not voting.

Nate Paul
Secretary of the Senate

Robert H. Hamon
Chief Clerk of the House

Approved:

19 Jun 09
Date

Rick Perry
Governor

Filed in the Office of the Secretary of State
7 PM

Jun 19 2009

Colly Painter