

Allocation of Sales Taxes When City Annexes Territory Served by Emergency Services District

ISSUE

Currently, when a city that annexes territory served by an emergency services district (ESD), but does not provide emergency services, the city has the potential under state statute to not collect any sales tax revenue in the newly-annexed territory.

ANALYSIS

Currently, Tax Code Section 321.102 covers sales tax overlaps that result from municipal annexation into an area served by an ESD.

With some exceptions, the section provides that a municipal sales tax displaces the sales tax of another entity (like an ESD) that previously levied a tax within the annexed territory. However, when the sales tax of an entity like an ESD is reduced as a result of municipal annexation the ESD is kept whole by the comptroller's deduction of a corresponding amount from the sales tax of the annexing municipality. This amount is then paid to the ESD. This is the provision that ESDs rely on to continue to obtain the sales tax.

For example, under current law, if both a city and an ESD have a sales tax of two percent, the comptroller would withhold two percent from the city and pay that amount to the ESD. As a result, the city currently would not be able to keep any sales tax revenue in the newly annexed area.

SOLUTION

The Legislature should act to allow for a more equitable distribution of sales tax revenue in territory annexed by a municipality that is also served by an ESD. Cities must provide streets, water, police, and a host of other services to all of their residents, including any new residents annexed into the city. The city must receive some sales tax revenue in order to provide these services.

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the allocation of sales and use tax by
3 municipalities and emergency services districts.

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

5 SECTION 1. Section 775.0753, Health & Safety Code, is
6 amended by amending subsection (c), and adding subsections (d)
7 and (e), to read as follows:

8 Sec. 775.0753. (c) The provisions of Section 321.102, Tax
9 Code, governing the application of a municipal sales and use tax
10 in the event of a change in the boundaries of a municipality
11 apply to the application of a tax imposed under this chapter in
12 the event of a change in the district's boundaries, except as
13 provided by Subsections (d) and (e).

14 (d) In the event of an annexation, planned annexation,
15 voluntary annexation, negotiated annexation or limited purpose
16 annexation by a municipality for full purposes of part of an
17 emergency services district operating under this chapter that
18 has adopted a sales and use tax and where the annexed area is
19 not removed from the district, nothing herein shall prohibit the
20 municipality and the district prior or subsequent to such
21 annexation from contracting or entering into an agreement
22 regarding an allocation of the sales and use tax between the
23 municipality and the district, provided the combined rate of
24 local sales and use taxes of the municipality and the district

Comment [a1]: In summary: This section provides the statutory authority for a city and ESD to contractually allocate sales tax among themselves in the event of an annexation.

1 does not exceed two percent. In the event such an agreement is
2 entered into between the municipality and the district, the
3 comptroller shall recognize the agreement, and pay the amounts
4 as agreed between the municipality and the district, under
5 policies and procedures that the comptroller considers
6 reasonable. Notwithstanding Section 43.056, Local Government
7 Code, or any other law, a municipality that annexes territory in
8 a district that is the subject of an agreement under this
9 section is not required to provide emergency services in that
10 annexed territory.

11 (e) In the event of an annexation, planned annexation,
12 voluntary annexation, negotiated annexation or limited purpose
13 annexation by a municipality for full purposes of part of an
14 emergency services district operating under this chapter that
15 has adopted a sales and use tax of at least one and three-
16 eighths percent, where the annexed area is not removed from the
17 district, and if the municipality and district have not been
18 able to reach an agreement under subsection (d), the sales and
19 use tax rate for both the district and the municipality shall be
20 reduced in the annexation area by an amount equal to one-half of
21 the amount that the combined sales and use tax rate of the
22 district, the municipality, and any other entities authorized to
23 collect local sales and use taxes in the annexation area would
24 have exceeded the maximum authorized local sales and use tax
25 rate. The comptroller shall establish policies or procedures
26 that the comptroller considers reasonable to implement this
27 subsection. Notwithstanding Section 43.056, Local Government

Comment [a2]: In summary, this section provides that, when a city and ESD cannot reach a contractual agreement upon annexation, the portion above the statutory cap is reduced equally among the parties.

1 Code, or any other law, a municipality that annexes territory in
2 a district that is the subject of an allocation under this
3 section is not required to provide emergency services in that
4 annexed territory.

5 SECTION 2. Section 321.102, Tax Code, is amended by
6 amending subsection (f) and adding subsections (f-1) and (f-2)
7 to read as follows:

8 Sec. 321.102. (f) Except as provided by subsections (f-1)
9 and (f-2), if an entity's rate is reduced in accordance with
10 Subsection (e), the comptroller shall withhold from the
11 municipality's monthly sales and use tax allocation an amount
12 equal to the amount that would have been collected by the entity
13 had the municipality not imposed or increased its sales and use
14 tax or annexed the area in the entity less amounts that the
15 entity collects following the municipality's levy of or increase
16 in its sales and use tax or annexation of the area in the
17 entity. The comptroller shall withhold and pay the amount
18 withheld to the entity under policies or procedures that the
19 comptroller considers reasonable.

20 (f-1) If the rate of an emergency services district under
21 Chapter 775, Health and Safety Code, is reduced in accordance
22 with Subsection (e), the comptroller shall withhold from the
23 municipality's monthly sales and use tax allocation an amount
24 equal to one-half of the amount that the combined sales and use
25 tax rate of the district, the municipality, and any other
26 entities authorized to collect local sales and use taxes in the
27 annexation area would have exceeded the maximum authorized local

Comment [a3]: This new subsection directs the withholding from the Comptroller in the event that an overlapping sales tax exceeds two percent. Specific to ESDs and Cities

1 sales and use tax rate.. The comptroller shall withhold and pay
2 the amount withheld to the district under policies or procedures
3 that the comptroller considers reasonable.

4 (f-2) In the event that sales and use tax revenues are
5 allocated according to either Health & Safety Code 775.0753(d)
6 or 775.0753(e), the comptroller will allocate the sales and use
7 tax to the municipality and the emergency services district in
8 accordance with an agreement entered into pursuant to Health &
9 Safety Code 775.0753(d), or if no such agreement exists,
10 pursuant to Health & Safety Code 775.0753(e).

Comment [a4]: This new subsection directs the Comptroller's office to allocate sales tax according to the newly authorized contract (set forth above) or in the absence of the contract, the newly created formula (also set forth above). It is limited to cities and ESD's.

11 SECTION 3. This Act takes effect September 1, 2013.

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