



To: The Honorable Dustin Burrows,
Chairman, House Committee on Ways and Means

Re: Charge 1.2 HB 1525 and HB 2153, which relate to the collection of sales and use taxes by marketplaces and out-of-state businesses, specifically “Monitor the Comptroller of Public Accounts’ rules regulating the collection of sales, use, and franchise tax to ensure compliance...”

Thank you for the opportunity to comment on this important legislation and its current implementation specifically as it relates to the proposed changes to Rule 3.334. As Mayor Hunt has already testified the rules enacted by the State Comptroller’s office including 3.286 – Responsibility of the Seller, have begun to allow the State of Texas and local governments to receive collections from marketplaces and out-of-state-businesses. We support the continued implementation of those rules and their results.

There are sections of the proposed 3.334 rule that are consistent with the intent of HB 1525 and HB 2153 related to the collection of sales and use taxes by marketplaces and out-of-state businesses and we support these specific changes:

(a) (15) Marketplace Provider. (definition)

(c) (1) (E) Order Received outside of the state, fulfilled outside of the state.

(d) (2) (A) General Use Tax, Sale Consummated outside the state.

(l) (2) Out-of-state sale; seller engaged in business in Texas.

(l) (3) Local use tax rate for remote sellers.

(k) (5) Marketplace provider sales.

The three provisions in **BOLD** type above are the critical components of the rule directly relating to the 2 bills passed by the Legislature. The non-bold passages simply complement or refer to the new portions of the rule necessary under HB 1525 and 2153.

Regarding the rules that have been enacted, the State of Texas Comptroller’s office has remitted to the City of Coppell new Marketplace Providers amounts of \$8,000 in December and \$3,600 in January after deducting the State of Texas 2% administrative fee. The amount for the Single Local Rate collections were \$12,324.38 in December and \$14,713.02 for January after deducting the State of Texas 2% administrative fee. If these numbers remain consistent over an annual basis,

that is an increase in sales tax revenue collections of approximately \$231,000 for the City of Coppell.

This amount of increase pales in comparison to the potential loss resulting from the additional rule changes being proposed. The proposed language of 3.334 may cause what are now considered a place of business in Coppell to no longer be a place of business, resulting in sales tax previously allocated to Coppell being allocated to the municipality where the ordering party resides or is located. We hope this is not what the Comptroller's office intends; unfortunately, so far it looks like that will be the result. Since there was no analysis of data by the Comptroller's office and the possibility that no data exist that could quantify the severity of the lost revenue, the City of Coppell must plan for a worst-case scenario.

We have used the best available information to estimate the potential devastating impact of the proposed changes to Rule 3.334 that go beyond marketplace and out-of-state businesses. With the proposed changes as we read them, the City of Coppell could lose approximately \$25 million in annual sales tax revenue. That equates to nearly 20% of the City's total revenues. In the general fund alone, lost sales tax revenue is currently estimated to be between \$12-13 million.

Since the Comptroller's office first published, the proposed changes to Rule 3.334 we have been working to evaluate the impact of the proposed changes. We have met with the Comptroller's office to ask their assistance in providing us with any data they used to evaluate the impact of the changes. Their response is they did not evaluate the impact of the proposed changes, they are not sure what data they have that could help us evaluate the impact of the changes and if they did have any information, they are not sure, because of confidentiality requirements, that they can provide us with any of that data.

We have also asked in writing a series of questions to help gain clarity on the proposed rules. These questions can be put into three categories, 1) is there data that can help us better evaluate the impact of the proposed rules, 2) what is the relationship between Chapter 321 and the proposed changes to 3.334, and 3) help us understand the language in the proposed changes to the rule.

While we have not received any written responses in time for this hearing, our hope is that we do receive input from the Comptroller's office in time to submit specific comments by the current public comment closing date of February 17th.

Subsequent to the rule being published, we have analyzed the City's State Comptroller provided confidentiality reports and identified approximately 447 businesses that report sales and use tax remittance within the City of Coppell. In examining the top 100 of these businesses, 37% are easily identifiable as pure retail establishments such as restaurants, shops, grocery stores and retail outlets. The remaining 63% are service providers and/or product providers more in line with business to business operations and sales.

More importantly, these 63% represent over 85% of the City's total sales tax collection. Any significant change in sourcing the remittance of sales tax to the City of Coppell may result in the severe revenue reductions as I described earlier.

Given the quick turnaround this proposed rule is requiring for comments and possible implementation, we have begun to meet with a sampling of our top business sales tax remitters. What we are finding through a series of targeted questions is that we will have to get with the Comptroller's office to get clarification on whether a specific business will be required to change its sourcing, a tedious and time-consuming effort that may involve businesses having to decide or be required to change their accounting practices to meet the new rules. Currently all this will have to be effective April 1, 2020 according to the published rule's implementation date. There is just not enough time to get all of this done and to effectively evaluate the impact of the proposed rules.

There is not only a potential negative financial impact to the City of Coppell, the business community is going to have to possibly adjust their standard accounting practices to reflect the proposed rules.

The proposed rules beyond those necessary to implement HB 1525 and HB 2153, as described earlier and which we support, are complicated and create a lot of uncertainty for the City of Coppell. In anticipation of their implementation as proposed, the City has already put a hold on certain capital investments and on all hiring of vacant positions. We must assume the worst-case scenario based on the rules as proposed and their current implementation date because there was no evaluation done to support the changes and there is no apparent data that can be provided to the City to help us evaluate the impact. The potential damage by the proposed rule is already taking its toll and is having an impact on our decision-making process.

Thank you for the opportunity to comment on our support of the proposed changes to Rule 3.334 that implement the legislative intent of HB 1525 and HB 2153, and to voice our concerns regarding the reach and possible negative impacts of the balance of the proposed changes and the speed of their implementation.

My request to this Committee is to ask the State Comptroller's office to move forward with only those rules necessary to carry out the legislative intent of HB 1525 and HB 2153 that specifically address the collection of sales and use taxes by marketplaces and out-of-state-businesses and that all other proposed changes be delayed until after the Committee completes its analysis and possibly addresses this during the next legislative session.

Sincerely,



Michael Land
City Manager