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The 411 on SB 636

Since the inception of ESDs receiving sales tax revenue, the ESDs themselves have never been able to see where that money actually came from. This created a situation where entities charged with administration of the tax did not know any of the details of the tax. No information meant the ESDs were “flying blind” as it related to their sales tax revenue. All that changed on September 1, 2009.

What Happened?

In Texas’ 81st Legislative session, SB 636 gave authority to emergency services districts to receive the confidential sales tax information listing the specific businesses and the payments remitted by the same. By amending Section 321.3022, Tax Code, emergency services districts, metropolitan transportation districts, library districts and a host of other “special purpose districts” all fell under the umbrella of “other local governmental entities” that are authorized to receive the confidential data.

Why Is It Important?

Sales Tax is a volatile revenue source, as many ESDs have learned. The income stream can be unpredictable and can fluctuate wildly from month to month. Budgeting and forecasting sales tax can be a frustrating undertaking, often yielding inaccurate results.

A look “under the hood” at the details of the sales tax revenue often yields clues as to how that revenue may react in volatile retail markets and what specific retailers and businesses might be affected. Taking a look at the detailed sales tax data allows the entities to no longer “fly blindly”, but actually see what makes up the numbers.

This makes the auditing and forecasting functions more accurate for everyone. It allows the ESDs to work with the comptroller’s office to check on individual businesses to insure they are remitting to the ESD. It allows the ESD to track sales tax revenue with a better understanding of what the underlying data means and how it impacts revenue trends.

What Is It and How Can It Be Used?

Section 321.3022, subsection (b) reads:

(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,

Subsections (f) and (g) go a bit farther and explain what the data can be used for:

(f) Information received by a municipality 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 municipality or other local governmental entity under this chapter, or for the purpose described in Subsection (g).

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

As far as ESDs are concerned, there are really only **two (2) authorized uses of the confidential data, economic forecasting and internal auditing of a tax paid**, since ESDs do not participate in revenue sharing agreements. **Economic forecasting** can be an extremely powerful tool when the underlying data is accurate. ESDs that undertake that effort will be rewarded with a better understanding of what makes up their revenue stream and how it will be impacted in the weeks, months and years ahead. **Internal auditing** allows the ESDs to examine the revenue coming from the businesses to check for non-filers, misallocations (given to another jurisdiction) or other situations that would negatively impact the

revenue to the ESD. The ESD does NOT have the authority to audit any of the businesses' sales tax, only the comptroller does.

The other little "nugget" in here is actually quite important and that "nugget" is **confidentiality**. The chief administrative officer or the governing body has to request the confidential data from the comptroller and agree not to disclose the data to anyone or to use the data for any purposes other than those prescribed above. The penalty is up to 6 months in jail and a \$1,000 fine (Texas Government Code sec 552.352), so certain procedures need to be in place to deal with the confidential data itself.

What Should You Do?

Districts that want to move forward should start by requesting the confidential data from the comptroller. The comptroller maintains up to two (2) years worth of the data, the current and past year, so the district should request their data before the end of the current calendar year (December 31) in order to get both available years. If the request is made after that date, only the new current year and one prior year is available and the first year's data is unobtainable.

The data needs to be kept safe from anyone not authorized to see it. Any reports generated from the data should be controlled so that unauthorized access is prevented. All uses of the data should be carefully monitored to insure compliance with the statute.

SB 636 gave ESDs a tremendous opportunity for better sales tax forecasting and information. With that opportunity came a large amount of responsibility on the ESD. If the district is up to the task, the rewards can be great and the information can be quite useful.

Obviously, there are many reports that can be generated from the data to assist ESDs in understanding their sales tax and its fluctuations. The purpose of this article is not to provide comprehensive reporting solutions and guidelines, but to provide a basic understanding of the data's availability in the wake of

the recent legislative session. MuniServices provides many reporting tools for its Texas clients and looks forward to the opportunity to serve emergency services districts.

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