

Texas Taxes: A Review of Legislative, Administrative and Judicial Issues by the Comptroller's Office

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Administrative Rule 3.286

- Amendments to Rule 3.286 became effective on January 1, 2019.
 - Reflects the statutory provisions in Texas Tax Code Section 151.107 (Retailers Engaged in Business in this State).
 - 151.107(a)(4) – “engages in regular or systematic solicitation of sales of taxable items in this state by distribution of catalogs, ..., or other advertising, ... for the purpose of effecting sales of taxable items.
 - 151.107(a)(5) – “solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to ... collection of the taxes imposed by this chapter;

Administrative Rule 3.286 (cont.)

- The amended rule notifies remote sellers about their Texas use tax collection responsibilities.
- The agency has adopted a safe harbor provision for small remote sellers (total Texas revenue from sales into Texas less than \$500,000 during the preceding twelve-month period).
- Under Rule 3.286, remote sellers above the safe harbor amount had an obligation to begin collecting use tax beginning on October 1, 2019.

Marketplace Provider Collection

HB 1525

- Marketplace Provider – a person who owns or operates a marketplace and processes sales or payments (directly or indirectly) for third party sellers.
- Marketplace provider shall:
 - have the rights and duties of a seller on sales made through the marketplace;
 - collect and remit sales and use tax and report on all sales made through the marketplace; and
 - certify that it will collect and remit sales and use tax on the marketplace seller’s behalf.
- Marketplace sellers must furnish information to allow the marketplace provider to collect and remit correctly.
- Destination sourcing for local tax on sales of taxable items by a marketplace provider for a marketplace seller.
- Exclusion of certain marketplace type business models?
- Effective Date of October 1, 2019
- Amending Rules 3.286 and 3.334
- Do remote sellers’ sales through marketplace providers count towards economic nexus safe harbor threshold?

Single Local Tax Rate for Remote Sellers

- Eases undue burdens for remote sellers - Approximately 1,600 local taxing jurisdictions in Texas
- Initial average single local tax rate is 1.75% to be recalculated by January 1, 2020
- Election for Remote Sellers
- Notification to the Comptroller's office
- Proportionately distribute to the local jurisdictions
- Refund option for purchasers
- No use tax liability for purchasers in higher local tax jurisdictions
- Amending Rule 3.334 Local Sales Tax

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CERTIFICATION REVENUE ESTIMATE

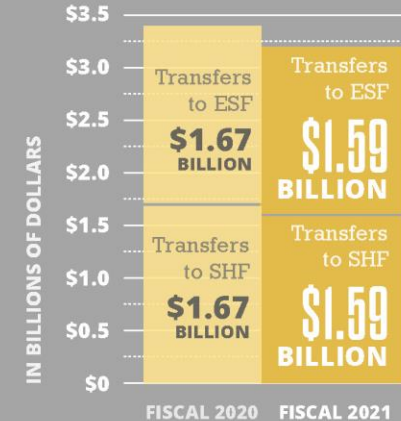
Prior to the legislative session, the Comptroller issues a Biennial Revenue Estimate (BRE) to tell lawmakers how much they can spend over the next two years. After the legislative session, the Comptroller issues a Certification Revenue Estimate (CRE) to reflect legislative activity and the most current economic information, as well as to take into account final revenue numbers for the recently ended fiscal year.

Revenue Available for General-Purpose Spending in the 2020-21 Biennium

	BIENNIAL REVENUE ESTIMATE May 2019	CERTIFICATION REVENUE ESTIMATE October 2019	
General Revenue-Related (GR-R) Tax Collections =	\$107.32	\$108.14	In Billions of Dollars
Other GR-R Revenues +	\$14.16	\$14.99	
Total GR-R Revenues =	\$121.48	\$123.13	SUBTOTAL
Beginning Balance (Funds carried forward from 2019) +	\$4.70	\$4.72	
Change in GR-Dedicated Account Balances from the BRE +	N/A	\$0.39	
Total GR-R Revenue & Fund Balances =	\$126.18	\$128.24	SUBTOTAL
Revenue Reserved for Transfers to the Economic Stabilization and State Highway Funds -	\$6.55*	\$6.48	
Total Revenue Available for General-Purpose Spending =	\$119.63	\$121.76	TOTAL

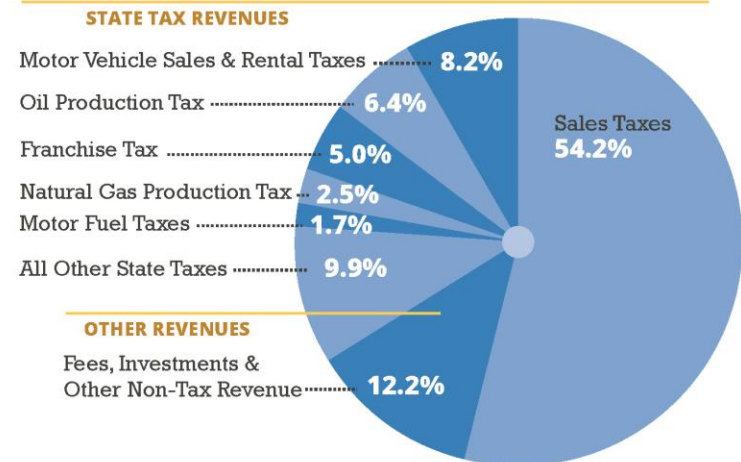
*Includes reserve for Transfer to Texas Tomorrow Fund

Severance tax transfers to the Rainy Day Fund and the State Highway Fund



Each fiscal year, amounts reserved in the previous fiscal year are transferred to the state's Economic Stabilization Fund (ESF), also known as the "Rainy Day Fund," and the State Highway Fund (SHF).

Projected General Revenue-Related Revenues



Note: Percentages do not sum to 100.0 due to rounding

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PVSAC vs. PTAAB

	PVSAC	PTAAB
Membership	<p>(1) member of the House; (1) member of the Senate; (2) members representing Appraisal Districts; (2) members representing School Districts; and (3) members who are school district taxpayers or have expertise in school district taxation or ratio studies</p>	<p>At least 6 members appointed by the comptroller, to include:</p> <ul style="list-style-type: none"> - representatives of property taxpayers; - appraisal districts; - assessors; - school districts; and - a person who has knowledge or experience in conducting ratio studies

PVSAC vs. PTAAB

	PVSAC	PTAAB
Scope of duties	Comptroller to consult with PVSAC on rules governing conduct of the Property Value Study	Comptroller to consult with PTAAB on rules governing: <ul style="list-style-type: none">- Conduct and scoring the Methods and Assistance Program reviews;- Conduct of the Property Value Study (same as PVSAC); and- form of a new notice of estimated taxes that will go to property owners required by SB 2

PVSAC vs. PTAAB

	PVSAC	PTAAB
Scope of duties (cont'd)	Comptroller to consult with PVSAC on rules governing conduct of the Property Value Study	PTAAB may make recommendations to comptroller related to: 1) improving the effectiveness of the property tax system; 2) improving the efficiency of the property tax system 3) best practices; and 4) complaint resolution

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Wayfair: Impact on other Taxes

- Franchise Tax: Amendments to Rule 3.586 Nexus: Margin have been proposed establishing a \$500,000 economic nexus threshold.
 - Effective for reports due on or after January 1, 2020.
 - Public Law 86-272
 - Joyce vs. Finnegan
- Motor Vehicle Rental Taxes: Marketplace Legislation proposed.
- Hotel Tax: Marketplace Legislation proposed.

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Franchise Tax Cases

- COGS day before the Texas Supreme Court
 - *Hegar v. American Multi-Cinema, Inc. (17-0464)*
 - Does a movie theater produce “goods”? If so, what costs can be included in COGS deduction?
 - *Hegar v. Gulf Copper and Manufacturing Corp. (17-0894)*
 - Total Revenue and COGS deduction issues
 - *Sunstate Equipment Co., LLC v. Hegar (17-0444)*
 - *What costs can a heavy equipment rental company include in COGS deduction? Can the rental company deduct the costs of equipment delivery and pick-up?*

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Revenue Volatility, 1996 - 2018

Revenue Source	Avg Annual Growth Rate	Maximum	Minimum	Negative Years
Property Values	6.4%	11.7%	-1.7%	1

Revenue Volatility, 1996 - 2018

Revenue Source	Avg Annual Growth Rate	Maximum	Minimum	Negative Years
Property Values	6.4%	11.7%	-1.7%	1
Sales Taxes	5.1%	12.5%	-6.6%	5

Revenue Volatility, 1996 - 2018

Revenue Source	Avg Annual Growth Rate	Maximum	Minimum	Negative Years
Property Values	6.4%	11.7%	-1.7%	1
Sales Taxes	5.1%	12.5%	-6.6%	5
Motor Vehicle Sales and Rental Taxes	4.5%	19.8%	-21.9%	3

Revenue Volatility, 1996 - 2018

Revenue Source	Avg Annual Growth Rate	Maximum	Minimum	Negative Years
Property Values	6.4%	11.7%	-1.7%	1
Sales Taxes	5.1%	12.5%	-6.6%	5
Motor Vehicle Sales and Rental Taxes	4.5%	19.8%	-21.9%	3
Severance Taxes	8.4%	83.3%	-52.4%	8

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ESF Appropriations, SB 500, 86R

Agency / Program	Total
TEA - FSP Harvey Costs	\$ 1,171,200,000
TWDB - State Flood Plan Infrastructure Projects	\$ 793,000,000
TRS - One-Time Additional Annuitant Payment	\$ 589,000,000
TRS - Additional State Contribution	\$ 524,000,000
HHSC - State Hospital Construction	\$ 445,354,363
TWDB - FEMA Public Assistance Grants	\$ 365,000,000
TWDB - FEMA Hazard Mitigation Grants	\$ 273,000,000
TEA - Post-Harvey Recovery and Reimbursements to ISDs	\$ 271,300,000

ESF Appropriations, SB 500, 86R

Agency / Program	Total
Comptroller - Texas Tomorrow Fund	\$ 210,981,159
GLO - Army Corp of Engineers Programs	\$ 200,000,000
Soil and Water Conservation Board - Dam Infrastructure Projects	\$ 150,000,000
TxDOT - Transportation Infrastructure Fund Grants	\$ 125,000,000
HHSC - Harvey Costs	\$ 110,000,000
Office of the Governor - Disaster Grants	\$ 100,000,000
TEA - School Hardening	\$ 100,000,000
Department of Public Safety - Harvey Costs	\$ 96,954,409

ESF Appropriations, SB 500, 86R

Agency / Program	Total
Texas A&M Forest Service - Wildfires	\$ 54,909,580
TDCJ - Repair and Rehabilitation of Facilities	\$ 54,000,000
Total	\$ 5,633,699,511

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Court Cases of Interest

- *Sirius XM Radio, Inc. v. Hegar*
 - Franchise Tax Apportionment and COGS issue
 - 3rd Court of Appeals oral arguments were made on November 6, 2019

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